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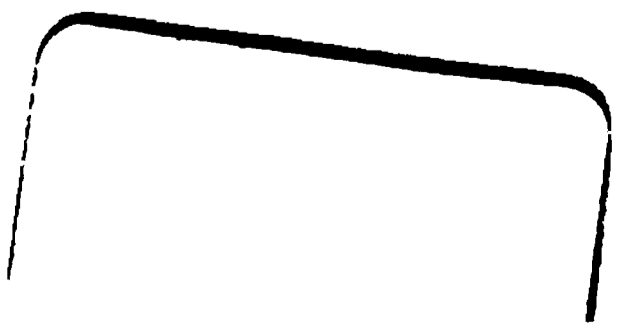
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STATUTES

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STATUTORY CONSTRUCTION

INCLUDING

A DISCUSSION OF LEGISLATIVE POWERS, CONSTITUTIONAL
REGULATIONS RELATIVE TO THE FORMS OF LEGIS-
LATION AND TO LEGISLATIVE PROCEDURE

BY

J. G. SUTHERLAND

AUTHOR OF "A TREATISE ON THE LAW OF DAMAGES"

SECOND EDITION

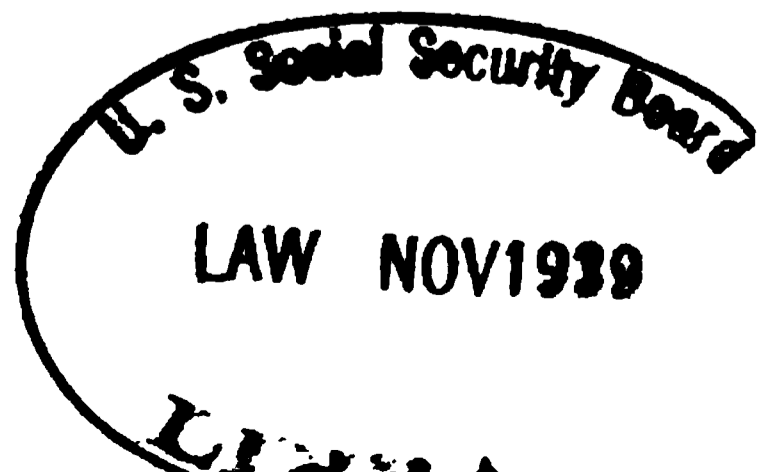
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JOHN LEWIS

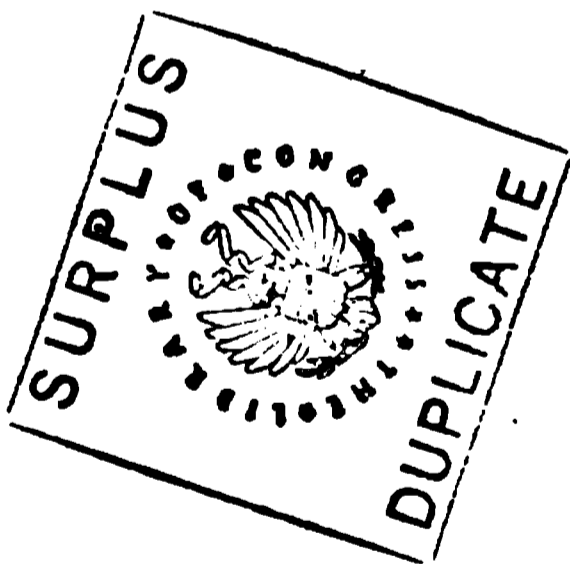
AUTHOR OF "A TREATISE ON THE LAW OF EMINENT DOMAIN"

VOLUME I

CHICAGO
CALLAGHAN AND COMPANY
1904



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STATE JOURNAL PRINTING COMPANY,
PRINTERS AND STEREOTYPERS,
MADISON, WIS.

PREFACE TO THE SECOND EDITION.

The favor which has been accorded the first edition of this work by the profession and the courts, well deserves a new edition, which is now offered, with the hope that it will merit a continuance of such favor. About six thousand new cases have been incorporated in the present edition. No material change has been made in the arrangement or plan of the work and the text of the first edition has, for the most part, been preserved without change. Nearly two hundred and fifty new sections have been added, which gives some idea of the importance and variety of the new cases. Parallel references have been made, in the notes, to the Reporter System, American Decisions, American Reports, American State Reports, Lawyers' Reports Annotated, The Federal Cases and to the Lawyers' Edition of the United States Supreme Court decisions.

JOHN LEWIS.

CHICAGO, *October, 1904.*

PREFACE TO THE FIRST EDITION.

No apology to the profession is necessary from the author for offering a new book on Statutory Construction, although it is a subject which his predecessors in the same work have treated in a masterly manner. It is a field in no danger of being over-cultivated.

The law for the construction of written contracts and other private documents is as certain and well defined as upon any other branch of legal science. This is not equally true of the law for the construction of *Written Laws*. They deal with subjects of greater complexity; they are the product of so many minds, not having common views, that incongruities cannot be wholly excluded, and threads of diverse ideas are often interwoven; and, moreover, opposing considerations of broader range press for recognition in their construction. In many ways converse rules overlap, and the lines of distinction are faint and shifting.

The natural tendency and growth of the law is towards system and towards certainty, towards modes of operation at once practical and just, by the process of its intelligent judicial administration; but this process is impaired by overwork and legislative interference.

When it is considered how many legislative bodies there are, and how many independent courts administer their laws, the diversities of construction which have occurred

are not surprising; these divergencies lead to permanent contrarieties bounded by state lines. Under such circumstances it is important that cognate cases be often collated and their principles generalized, with a view to maintaining the domain of the law as a science by remarking the true lines.

The frequent assertion of sound doctrine with copious illustrations is promotive of harmony. The author has embodied in this work the result of thorough reading of the cases, and a thoughtful and earnest endeavor to extract and put in elementary form their best teaching. And he submits it in the modest hope that his fellow-practitioners and the courts may find it useful and contributory to that end.

J. G. S.

SALT LAKE CITY,
December, 1890.

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STATUTES.

CHAPTER I.

THE LEGISLATIVE POWER AS DISTINGUISHED FROM OTHER SOVEREIGN POWERS, AND THE GENERAL NATURE OF STATUTORY LAW.

§ 1. **The order of subjects.**—The elementary nature of statutory law; the source and extent of its authority; the process of enactment; its commencement and duration, and the mode of proving it, when necessary, are subjects which naturally precede any consideration of the legal principles by which courts determine its meaning, construction and effect. Therefore, this order and sequence of topics will be pursued.

§ 2. **The three departments of government and their respective functions.**—In our republican system a written constitution is the great charter by which the sovereign people establish and maintain government, define, distribute and limit its powers. It is the organic and paramount law.

In the federal constitution, and in the state constitutions, the three fundamental powers—the legislative, executive and judicial—have been separated and organized in three distinct departments. This separation is deemed to be of the greatest importance; absolutely essential to the existence of a just and free government.¹ This is not, however, such

¹ About the middle of the last century Baron Montesquieu uttered words of wisdom to patriots and statesmen. He said: "When the legislative and executive powers are united in the same person, or the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again there

a separation as to make these departments wholly independent; but only so that one department shall not exercise the power nor perform the functions of another. They are mutually dependent, and could not subsist without the aid and

is no liberty of the judiciary power if it be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything were the same man, or the same body, whether of nobles or of the people, to exercise these three powers—that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.” *Spirit of Laws*, B. 11, ch. VI.

Dr. Paley remarks in his *Moral Philosophy*, B. 6, ch. 8: “The first maxim of a free state is that the laws be made by one set of men, and administered by another; in other words, that the legislative and judicial characters be kept separate. When these offices are united in the same person or assembly, particular laws are made for particular cases, springing oftentimes from partial motives, and directed to private ends. Whilst they are kept separate general laws are made by one body of men, without foreseeing whom they may affect; and when made, they must be applied by the other, let them affect whom they will.”

Blackstone, in his *Commentaries* (vol. 1, 146), says: “In all tyrannical

governments the supreme magistracy, or the right both of making and of enforcing laws, is vested in the same man, or one of the same body of men; and whenever these two powers are united together, there can be no public liberty. The magistrate may enact tyrannical laws and execute them in a tyrannical manner, since he is possessed, in quality of dispenser of justice, with all the power which he as legislator thinks proper to give himself. But when the legislative and executive authority are in distinct hands, the former will take care not to intrust the latter with so large a power as may tend to the subversion of its own independence, and therewith of the liberty of the subject.”

He also says in another part of his *Commentaries* (vol. 1, 269): “In this distinct and separate existence of the judicial power in a peculiar body of men, nominated indeed, but not removable at pleasure by the crown, consists one main preservative of the public liberty, which cannot subsist long in any state unless the administration of common justice be in some degree separated both from the legislative and also from the executive power. Were it joined with the legislative, the life, liberty, and property of the subject would be in the hands of arbitrary judges, whose decisions would be then regulated only by their own opinions, and not by

co-operation of each other. Under the constitutions the legislature is empowered to make laws; it has that power exclusively; the executive has the power to carry them by all executive acts into effect, and the judiciary has the exclusive power to expound them as the law of the land between suitors in the administration of justice. The legislature can do no executive acts, but it can legislate to regulate the executive office, prescribe laws to the executive which that department, and every grade of its officers, must obey. The legislature cannot decide cases, but it can pass laws which will furnish the basis of decision, and the courts are bound to obey them.² The functions of each branch are as distinct as the stomach and lungs in our bodies. They are intended to co-operate; not to be antagonistic; they are functions in the same system; when each functionary does its appropriate work no interference or conflict is possible.³

§ 3. A distinguished writer and jurist says: "When we speak of a separation of the three great departments of the government, and maintain that that separation is indispensable to public liberty, we are to understand this maxim in a limited sense. It is not meant to affirm that they must be kept wholly and entirely separate and distinct, and have no common link of connection or dependence, the one upon the other, in the slightest degree. The true meaning is, that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments; and that such exercise of the whole would subvert the principles of a free constitution. This has been shown with great clearness and accu-

any fundamental principles of law; which, though legislators may depart from, yet judges are bound to observe. Were it joined with the executive, this union might soon be an overbalance for the legislative."

In *Dash v. Van Kleeck*, 7 John. 508, 5 Am. Dec. 291, Kent, C. J.,

speaking of the legislative and judicial powers, said: "It is a well-settled axiom that the union of these two powers is tyranny." *Federalist*, No. 47.

²*Smith v. Judge*, 17 Cal. 557.

³*Reiser v. The Wm. Tell S. F. Asso.*, 39 Pa. St. 147.

raoy by the author of the *Federalist*.⁴ It was obviously the view taken of the subject by Montesquieu and Blackstone in their commentaries; for they were each speaking with approbation of a constitution of government which embraced this division of powers in a general view; but which at the same time established an occasional mixture of each with the others, and a mutual dependency of each upon the others. The slightest examination of the British constitution will at once convince us that the legislative, executive and judiciary departments are by no means totally distinct and separate from each other. The executive magistrate forms an integral part of the legislative department; for parliament consists of king, lords and commons; and no law can be passed except by the consent of the king. Indeed, he possesses certain prerogatives, such as, for instance, that of making foreign treaties, by which he can to a limited extent impart to them a legislative force and operation. He also possesses the sole appointing power to the judicial department, though the judges, when once appointed, are not subject to his will or power of removal. The house of lords also constitutes not only a vital and independent branch of the legislature, but is also a great constitutional council of the executive magistrate, and is in the last resort the highest appellate judicial tribunal. Again, the other branch of the legislature, the commons, possess in some sort a portion of the executive and judicial power, in exercising the power of accusation by impeachment; and in this case, as also in the trial of peers, the house of lords sits as a grand court of trial for public offenses. The powers of the judiciary department are indeed more narrowly confined to their own proper sphere. Yet still the judges occasionally assist in the deliberations of the house of lords by giving their opinion upon matters of law referred to them for advice; and thus they may, in some sort, be deemed assessors to the lords in their legislative as well as judicial capacity.”⁵ As co-ordinate branches of one government they are politically connected and bound together; but their powers

⁴ *Federalist*, No. 42.

⁵ *Story on Const.*, § 525.

and functions are not blended; they occupy no common ground, nor do they exercise any concurrent jurisdiction.

To some extent, and for certain purposes, the powers appropriate in their nature to one department are exercised by each of the others; sometimes by express direction of the supreme law;⁶ but otherwise only when it is done incidentally or as a means of exercising its own proper power.⁷

§ 4. Usually the constitution not only creates the three departments, but provides that those composing one department shall not exercise any of the powers properly belonging to either of the others. But it has been held that this prohibition is implied by the division into departments, so that the effect is the same whether the prohibition is expressed or not.⁸ Any statute which attempts to confer powers, or impose duties, upon one department which properly belong to the others, violates the constitution and is

⁶ *State v. Clapp*, 50 Minn. 239, 52 N. W. 655.

⁷ *Taylor v. Place*, 4 R. I. 324; *Watkins v. Holman*, 16 Pet. 60, 61, 10 L. Ed. 873; *Wyman v. Southard*, 10 Wheat. 1, 6 L. Ed. 253; *The Auditor v. Atchison, etc. R. R. Co.*, 6 Kan. 500, 7 Am. R. 575; *Flint, etc. P. R. Co. v. Woodhull*, 25 Mich. 99, 12 Am. Rep. 233. The distribution of the powers of government into the legislative, executive and judicial departments, and the appropriate sphere of each, are elaborately discussed in the following cases: *Fox v. McDonald*, 101 Ala. 51, 13 So. 416, 46 Am. St. Rep. 98, 21 L. R. A. 529; *Greenwood Cem. Land Co. v. Routt*, 17 Colo. 156, 28 Pac. 1125, 81 Am. St. Rep. 284, 15 L. R. A. 369; *People v. Thompson*, 155 Ill. 451, 40 N. E. 307; *People v. Chase*, 165 Ill. 527, 46 N. E. 454; *State v. Hyde*, 121 Ind. 20, 22 N. E. 644; *State v. Peelle*, 121 Ind. 495, 22

N. E. 654; *State v. Gorby*, 122 Ind. 17, 23 N. E. 678; *State v. Barker*, 116 Iowa, 96, 89 N. W. 204; *State v. Johnson*, 61 Kan. 803, 60 Pac. 1068; *State v. Higgins*, 125 Mo. 364, 28 S. W. 638; *Albright v. Fisher*, 164 Mo. 56, 64 S. W. 106; *Carter v. Commonwealth*, 96 Va. 791, 812, 32 S. E. 780, 45 L. R. A. 310. "The powers of these departments are not merely equal, they are exclusive, in respect to the duties assigned to each, and they are absolutely independent of each other. The encroachment of one of these departments upon the other is watched with jealous care, and is generally promptly resisted, for the observance of this division is essential to the maintenance of a republican form of government." *Langenberg v. Decker*, 131 Ind. 471, 478, 31 N. E. 190, 16 L. R. A. 108.

⁸ *State v. Johnson*, 61 Kan. 803, 60 Pac. 1068.

void.⁹ But no exact and complete delimitation of the several departments has yet been worked out, and the courts differ as to the proper assignment of various governmental functions. Some courts hold that the power of appointing political officers may be devolved upon any one of the departments including the judiciary.¹⁰ Other courts hold that acts conferring this power upon courts or judges are void.¹¹ It has been questioned whether the power of appointment to office is not exclusively executive in its nature,¹² but it

⁹ *Wulzen v. Board of Supervisors*, 101 Cal. 15, 35 Pac. 353, 40 Am. St. Rep. 17; *People v. Chase*, 165 Ill. 527, 46 N. E. 454; *People v. Mallary*, 195 Ill. 532, 63 N. E. 508, 88 Am. St. Rep. 212; *State v. Carr*, 129 Ind. 44, 28 N. E. 88, 28 Am. St. Rep. 163, 13 L. R. A. 177; *Langenberg v. Decker*, 131 Ind. 471, 31 N. E. 190, 16 L. R. A. 108; *State v. Barker*, 116 Ia. 96, 89 N. W. 204; *In re Sims*, 54 Kan. 1, 37 Pac. 135, 45 Am. St. Rep. 261, 25 L. R. A. 110; *In re Huron*, 58 Kan. 152, 48 Pac. 574, 36 L. R. A. 822; *In re Davis*, 58 Kan. 368, 49 Pac. 160; *State v. Johnson*, 61 Kan. 803, 60 Pac. 1068; *Felix v. Wallace Co. Com'rs*, 62 Kan. 832, 62 Pac. 667, 84 Am. St. Rep. 424; *Missouri, Kan. & Tex. Ry. Co. v. Simonson*, 64 Kan. 802, 68 Pac. 653, 91 Am. St. Rep. 248; *In re Durnford*, 7 Kan. App. 89, 53 Pac. 92; *Roberts v. Hackney*, 109 Ky. 265, 58 S. W. 810; *Robey v. Prince George's Co.*, 92 Md. 150, 48 Atl. 48; *Beasley v. Ridout*, 94 Md. 641, 52 Atl. 61; *State v. Washburn*, 167 Mo. 680, 67 S. W. 592, 90 Am. St. Rep. 430; *In re Ridgefield Park*, 54 N. J. L. 288, 23 Atl. 674; *Moreau v. Freeholders of Monmouth*, 68 N. J. L. 480, 53 Atl. 208; *Schwarz v. Dover*, 68 N. J. L. 576, 53 Atl. 214; *People v. Waters*,

4 Misc. 1, 23 N. Y. S. 691; *State v. Commissioners*, 54 Ohio St. 333, 43 N. E. 587; *State v. Guilbert*, 56 Ohio St. 575, 47 N. E. 551, 60 Am. St. Rep. 756; *Commonwealth v. Warwick*, 172 Pa. St. 140, 33 Atl. 373; *Carter v. Commonwealth*, 96 Va. 791, 32 S. E. 780, 45 L. R. A. 310; *Arkle v. Board of Com'rs*, 41 W. Va. 471, 23 S. E. 804; *In re Incorporation of North Milwaukee*, 93 Wis. 616, 67 N. W. 1033, 33 L. R. A. 638; *United States v. Queen*, 105 Fed. 269.

¹⁰ *Fox v. McDonald*, 101 Ala. 51, 13 So. 416, 46 Am. St. Rep. 98, 21 L. R. A. 529; *Roberts v. Cain*, 97 Ky. 722, 31 S. W. 729; *State v. George*, 22 Ore. 142, 29 Pac. 356, 29 Am. St. Rep. 586, 16 L. R. A. 737.

¹¹ *State v. Barker*, 116 Ia. 96, 89 N. W. 204; *Beasley v. Ridout*, 94 Md. 641, 52 Atl. 61; *Schwarz v. Dover*, 68 N. J. L. 576, 53 Atl. 214. In the last case it is held to make no difference whether the court is one provided for by the constitution or created by the legislature. But in the case first cited it is stated, though not held, that "courts which are not provided for by the constitution may be authorized to discharge functions that are executive or legislative in character."

¹² *State v. Hyde*, 121 Ind. 20, 22

is generally held that it may be exercised by the legislative department.¹³ Various functions may be devolved upon courts or judges in the matter of the incorporation of cities, towns and villages, the removal of county seats and the like,¹⁴ but the ultimate question of the expediency of such removal or incorporation, or the determination of the territory to be included within a municipality, is legislative in character and cannot be devolved upon the judiciary.¹⁵ A statute of Ohio in regard to the use of streets by telegraph and telephone companies provided that, if the company and municipality could not agree upon the mode of construction, the former might apply to the probate court, which should direct in what mode the line should be constructed, so as not to incommode the public in the use of the street. The act provided for a petition, notice, hearing and order or decree, in the usual manner of judicial proceedings. At first the act was held void as an attempt to confer legislative power on the judicial department, but on rehearing the act was sustained.¹⁶ An act requiring the judges of certain

N. E. 644; *State v. Peelle*, 121 Ind. 495, 22 N. E. 654; *State v. Gorby*, 122 Ind. 17, 23 N. E. 678. In *State v. Washburn*, 167 Mo. 680, 67 S. W. 592, 90 Am. St. Rep. 430, a law requiring the governor to appoint one of three election commissioners for a city from three persons to be named by a party central committee was held void as an attempt by the legislature to exercise the appointing power. The court, sitting *in banc*, says: "The act of filling a public office by appointment is essentially an administrative or executive act, and, under the constitution, can be exercised only by an officer charged with the duty of executing the laws." p. 696.

¹³ *People v. Freeman*, 80 Cal. 233, 22 Pac. 173, 13 Am. St. Rep. 122;

Americus v. Perry, 114 Ga. 871, 40 S. E. 1004; *Sinking Fund Com'rs v. George*, 104 Ky. 260, 47 S. W. 779, 84 Am. St. Rep. 454; *Eddy v. Kincaid*, 28 Ore. 537, 41 Pac. 156, 655; *State v. George*, 22 Ore. 152, 29 Pac. 356, 29 Am. St. Rep. 586, 16 L. R. A. 737; *State v. Compson*, 34 Ore. 25, 54 Pac. 349; *Reed v. Dunbar*, 41 Ore. 509, 69 Pac. 451.

¹⁴ *State v. Ueland*, 80 Minn. 29, 14 N. W. 58; *Todd v. Rustad*, 43 Minn. 500, 46 N. W. 73; *In re Town of Union Mines*, 39 W. Va. 179, 19 S. E. 398.

¹⁵ *In re Ridgefield Park*, 54 N. J. L. 288, 23 Atl. 674; *In re Incorporation of North Milwaukee*, 93 Wis. 616, 67 N. W. 1033, 33 L. R. A. 638.

¹⁶ *Zanesville v. Zanesville Tel. & Tel. Co.*, 63 Ohio St. 442, 59 N. E.

courts to divide a city into districts for the election of justices of the peace was held valid.¹⁷ So of an act requiring the county judge to fix the number of deputies to be employed by certain officers.¹⁸ A law requiring the plans for a court-house and jail to be approved by the judge of the circuit court was held valid,¹⁹ but a law authorizing a judge of the supreme court to designate the location and determine the plans and specifications for a court-house was held void, as an attempt to confer legislative power.²⁰ An act making the judge of a city court *ex officio* commissioner of roads and revenues for the county was held valid.²¹ An act requiring railroad companies to erect and operate gates at crossings, when ordered to do so by the supreme court on the application of the local authorities and after notice to the company, was held not to confer legislative power upon the court.²² An act of Maryland providing that on

109; on rehearing, 64 Ohio St. 67, 59 N. E. 781, 87 Am. St. Rep. 547, 52 L. R. A. 150. On rehearing the court says: "The institution and prosecution of a legal proceeding in court plainly comprehends the filing of a proper complaint, process for bringing the necessary parties into court, and judicial inquiry according to the usual rules and practice of courts. And this fact, alone, of conferring on a judicial tribunal in the first instance the power to act in a given matter is of controlling importance in giving judicial character to the nature of the power; though that is not necessarily a conclusive test, for, if it were, the existence of a statute would establish its validity; but it is decisive in that respect, unless it is reasonably certain that the power belongs exclusively to the legislative or executive department. . . . The principle obviously is, that where any power is

conferred upon a court of justice, to be exercised by it as a court, in the manner and with the formalities used in its ordinary proceedings, the action of said court is to be regarded as judicial, irrespective of the original nature of the power. The legislature, by conferring any particular power upon a court, virtually declares that it considers it a power which may be most appropriately exercised under the modes and forms of judicial proceedings." pp. 83, 84.

¹⁷ State v. Higgins, 125 Mo. 364, 28 S. W. 638.

¹⁸ Clark v. Finley, 93 Tex. 171, 54 S. W. 343.

¹⁹ Board of Com'rs v. Brown, 147 Ind. 476, 46 N. E. 908.

²⁰ Moreau v. Freeholders of Monmouth, 68 N. J. L. 480.

²¹ Phinizy v. Eve, 108 Ga. 360, 33 S. E. 1007.

²² People v. Long Island R. R. Co., 134 N. Y. 506, 31 N. E. 873. The court

the petition to the circuit court of a certain proportion of the registered and qualified voters of a specified county, or of any election district, city or town thereof, asking that the question of granting or not granting licenses for the sale of liquors be submitted at the next general election to be held in the county, the court shall issue an order for an election on that question to the sheriff of the county, who shall give notice of the election, etc., was held void, as imposing duties on the court not of a judicial nature.²³ An act of the same state making the court crier, an officer appointed by the court, custodian of the court-house and responsible for its care, was held void as indirectly imposing upon the court the appointment of such custodian.²⁴ Further illustrations are noted in the margin.²⁵ The legislature may not itself exercise judicial power,²⁶ or invade or en-

says: "No legislative power was given to the court. But the statute made the erection and operation of gates by railroad companies at places coming within those mentioned, dependent upon the necessity of them for the safety of travel upon the streets, to be ascertained and determined in the manner provided; and where the order is so made by the court, the statute is effective to enforce the duty of compliance with it. This is a condition not upon which the taking effect of the act is dependent, but upon which its application becomes effectual for the purpose and at the places within its contemplation. . . . pp. 507, 508.

"The act in question has the import of a perfect statute. And the fact that its operation in the application of it to the cases which might arise is dependent upon prescribed contingencies, furnishes no constitutional objection to it." p. 508.

²³ Board of Supervisors v. Todd, 97 Md. 247.

²⁴ Prince George's County v. Mitchell, 97 Md. 330.

²⁵ Acts held invalid as attempts to impose upon courts or judges non-judicial functions: Robey v. Prince George's County, 92 Md. 150, 48 Atl. 48; People v. Waters, 4 Misc. 1, 23 N. Y. S. 691; United States v. Queen, 105 Fed. 269. Acts held valid, though conferring powers outside of the ordinary judicial functions: Stevens v. Truman, 127 Cal. 155, 59 Pac. 397; McCrea v. Roberts, 89 Md. 238, 43 Atl. 89, 44 L. R. A. 485; Citizens' Savings Bank v. Green, 173 N. Y. 215, 65 N. E. 978; Campbellsville Lumber Co. v. Hubbert, 112 Fed. 718, 50 C. C. A. 435; Dinsmore v. State, 61 Neb. 418, 85 N. W. 445. And see Moynihan's Appeal, 75 Conn. 358, 58 Atl. 1123.

²⁶ Felix v. Wallace Co. Com'rs, 62 Kan. 832, 62 Pac. 667, 84 Am. St. Rep. 424; Commonwealth v. War-

croach upon the sphere of the judicial department.²⁷ The power to punish for contempt is judicial and cannot be conferred upon administrative officers²⁸ or a legislative committee.²⁹ This power is held to be inherent in courts and one of which they cannot be deprived by the legislature.³⁰ The power to hear charges against public officers, and remove them for cause, may be exercised by legislative or executive officers.³¹ So administrative and executive officers and boards may be authorized to inquire into and determine facts, conditions and qualifications, for the purpose of applying and carrying into effect acts passed by the legislature.³² But sometimes acts of this nature go too far

wick, 172 Pa. St. 140, 30 Atl. 373; State v. Carr, 129 Ind. 44, 28 N. E. 88, 28 Am. St. Rep. 163, 18 L. R. A. 177.

²⁷ *Wulzen v. Board of Supervisors*, 101 Cal. 15, 35 Pac. 353, 40 Am. St. Rep. 17; *Missouri, Kan. & Tex. Ry. Co. v. Simonson*, 64 Kan. 802, 68 Pac. 653, 91 Am. St. Rep. 248. Compare the following in which the acts in question were held valid: *People v. Hayne*, 83 Cal. 111, 23 Pac. 1, 17 Am. St. Rep. 217; *Townsend v. State*, 147 Ind. 624, 47 N. E. 19, 62 Am. St. Rep. 477, 37 L. R. A. 294; *People v. Cannon*, 139 N. Y. 32, 34 N. E. 759, 36 Am. St. Rep. 668; *McElwee v. McElwee*, 97 Tenn. 649, 37 S. W. 560. In *Slaughter v. Louisville*, 89 Ky. 112, 8 S. W. 917, the assessment of property was held to be a ministerial act, which the legislature could not perform directly.

²⁸ *Langenberg v. Dicker*, 131 Ind. 471, 31 N. E. 190, 16 L. R. A. 108; *In re Sims*, 54 Kan. 1, 37 Pac. 135, 45 Am. St. Rep. 261, 25 L. R. A. 110; *In re Huron*, 58 Kan. 152, 48 Pac. 574, 36 L. R. A. 822; *Roberts v.*

Hackney, 109 Ky. 265, 58 S. W. 810; *People v. Leubischer*, 84 App. Div. 577, 54 N. Y. S. 869.

²⁹ *In re Davis*, 58 Kan. 368, 49 Pac. 160.

³⁰ *Carter v. Commonwealth*, 96 Va. 791, 32 S. E. 780, 45 L. R. A. 310; *State v. Shepherd*, 177 Mo. 205.

³¹ *Croly v. Sacramento*, 119 Cal. 229, 51 Pac. 323; *Lynch v. Chase*, 55 Kan. 367, 40 Pac. 666; *Gibbs v. Board of Aldermen*, 99 Ky. 490, 36 S. W. 524; *State v. Smith*, 35 Neb. 13, 52 N. W. 700; *State v. Hay*, 45 Neb. 321, 63 N. W. 821; *State v. Common Council*, 90 Wis. 612, 64 N. W. 304. The contrary is held in *Arkle v. Board of Com'rs*, 41 W. Va. 471, 23 S. E. 804, as to the removal of justices of the peace on charges.

³² *Bowen v. Clifton*, 105 Ga. 459, 31 S. E. 147; *People v. Kipley*, 171 Ill. 44, 49 N. E. 229; *State v. Page*, 60 Kan. 664, 57 Pac. 514; *Tyler v. Court of Registration*, 175 Mass. 71, 55 N. E. 812; *Northrup v. Maneka*, 126 Mich. 550, 85 N. W. 1128; *State v. Hatchaway*, 115 Mo. 36, 21 S. W. 1081; *France v. State*, 57 Ohio St. 1, 47 N. E. 1041; *People v. Hasbrouck*,

and attempt to confer judicial power in violation of the

11 Utah, 291, 39 Pac. 918; *E. A. Chatfield Co. v. New Haven*, 110 Fed. 788; *Niagara Fire Ins. Co. v. Cornell*, 110 Fed. 816; *Meffert v. Medical Board*, 66 Kan. 710, 72 Pac. 247. In *France v. State*, 57 Ohio St. 1, 47 N. E. 1041, the court, in speaking of the powers and duties conferred upon the state board of medical registration and examination, says: "It would be difficult to draw the precise line between those functions that may be constitutionally devolved upon the other departments and those which pertain strictly to the judiciary; and so far as we are aware the attempt has not been made. But in numerous instances, from an early period in the history of the state, the legislature has invested various boards, bodies and officers with the power, and charged them with the duty, of ascertaining facts, and hearing and deciding questions, when deemed necessary or expedient, in order to carry into execution laws enacted to accomplish some public need or purpose, or deemed for the public good. Of this nature are those powers conferred upon boards of county commissioners and township trustees, to determine upon the necessity and propriety of establishing, improving, altering and vacating public roads and ditches, and to ascertain and decide whether the necessary steps required by the law have been taken in the proceedings; also, those with which other boards and officers have been clothed to determine which of several bidders for

public works or contracts is the lowest, responsible one; those which authorize county auditors to make additions to tax duplicates, and many others of a kindred nature which might be mentioned: all requiring in some manner and degree, and for some purpose, the exercise of the power to hear and determine important questions, sometimes involving large interests. . . . The powers of the board bear a close analogy to those of boards of school examiners, who are authorized to grant certificates to teach in the public schools to applicants who are found, on examination, to possess the necessary qualifications and furnish satisfactory evidence of good moral character; and to revoke any certificate granted, for intemperance, immoral conduct, or any other good cause. These boards, in the discharge of their duties, do not exercise the judicial power which the constitution reserves to the courts, but are public agencies designated by the state to aid in making its common school system effective. And the medical board is but an agency of like character, clothed with similar powers, to ensure the effective execution of a law designed for the promotion of the public health and welfare. The purpose of the statute undoubtedly is, by enforcing the requirements it has prescribed for the admission of persons to the practice of medicine in the state, to prevent those from engaging in the practice of that profession who, from lack of proper knowledge or

constitution.³³ Courts cannot compel the legislature to act nor control its action in matters committed to its discretion.³⁴ The same provision of the constitution protects municipal legislatures from interference by the courts and they may not enjoin the passage of ordinances.³⁵

§ 5 (4). The whole legislative power delegated to the federal government is vested in congress, with the exceptions made in the constitution, as in the instance of making treaties. Congress has only enumerated powers; the residue is retained by the states, and is vested by their constitutions in their legislatures, subject to restrictions and limitations in the federal constitution and that of the particular state. In creating a legislative department of a state government, and conferring upon it the legislative power, the people must be understood to have conferred the full and complete power as it rests in, and may be exercised by, the sovereign power of any country, subject only to such restrictions as they may have seen fit to impose, and to the limitations which are contained in the constitution of the United States.³⁶ A state legislature has plenary power of legislation and may pass any and all laws not pro-

want of moral rectitude, are unfit to be intrusted with its important and responsible duties. The power to pass upon the qualifications required must necessarily be committed to some board or body other than the legislature, and may be, not inaptly, characterized as administrative, rather than judicial, within the meaning of the constitution." pp. 18, 19.

³³ *People v. Chase*, 165 Ill. 527, 46 N. E. 454; *People v. Mallory*, 195 Ill. 582, 63 N. E. 508, 88 Am. St. Rep. 212; *In re Durnford*, 7 Kan. App. 89, 53 Pac. 92; *State v. Guilbert*, 56 Ohio St. 575, 47 N. E. 551, 60 Am. St. Rep. 756.

³⁴ *People v. Thompson*, 155 Ill. 451, 40 N. E. 307.

³⁵ 1 Dill. *Munic. Corp.*, § 308, n.; *Albright v. Fisher*, 164 Mo. 56, 64 S. W. 106. *Contra*: *Trading Stamp Co. v. Memphis*, 101 Tenn. 181, 47 S. W. 136. In the following cases it was held that *mandamus* would lie to compel the president of a city to sign ordinances duly passed: *State v. Meier*, 72 Mo. App. 618; *Dreyfus v. Lanergan*, 73 Mo. App. 336. See 1 Dill. *Munic. Corp.* 408, note.

³⁶ *Cooley's Const. Lim.* (4th ed.) 100; *Donnell v. State*, 48 Miss. 679, 12 Am. Rep. 875; *Governor v. McEwen*, 5 Humph. 241; *Knoxville, etc. R. R. Co. v. Hicks*, 9 Baxt. 442.

hibited by the constitution of the state or of the United States.²⁷ So all the executive power which can be exercised is vested in the executive department, and all the operative judicial power in the judiciary department.²⁸

§ 6 (5). **The judicial power.**—The power which is entirely and exclusively vested in the judiciary department is the power conferred on judicial courts and tribunals to administer punitive and remedial justice to and between persons subject to, or claiming rights under, the law of the land. The exercise of this power includes invariably *actor*, *reus*, and *judex*, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings. It is part of this judicial power to determine what the law is; and all questions involving the validity and effect of statutes when thus determined are authoritatively settled.²⁹

²⁷ Sheppard v. Dowling, 127 Ala. 1, 28 So. 791, 85 Am. St. Rep. 68; Mitchell v. Winkek, 117 Cal. 520, 49 Pac. 579; People v. Richmond, 16 Colo. 274, 26 Pac. 929; In re Kindergarten Schools, 18 Colo. 234, 32 Pac. 422, 19 L. R. A. 469; State v. Bulkley, 61 Conn. 287, 23 Atl. 186, 14 L. R. A. 657; Wilson v. Sanitary Trustees, 138 Ill. 443, 27 N. E. 203; People v. Kirk, 162 Ill. 188, 45 N. E. 830, 58 Am. St. Rep. 277; People v. Onahan, 170 Ill. 449, 48 N. E. 1003; Ex parte Roberts, 166 Mo. 207, 65 S. W. 726; State v. French, 17 Mont. 54, 41 Pac. 1078, 30 L. R. A. 415; Magneau v. Fremont, 30 Neb. 843, 47 N. W. 280, 27 Am. St. Rep. 436, 9 L. R. A. 786; Koch v. New York, 5 App. Div. 276, 39 N. Y. S. 164; People v. Young, 18 App. Div. 162, 45 N. Y. S. 772; Probasco v. Raine, 50 Ohio St. 878, 34 N. E. 536; Southern Gum Co. v. Laylin, 66 Ohio St. 578, 64 N. E. 564; Phillips v. Lewis, 3 Tenn.

Cases, 230; Stratton Claimants v. Morris Claimants, 89 Tenn. 497, 15 S. W. 446; Henley v. State, 98 Tenn. 665, 41 S. W. 352; State v. Brownson, 94 Tex. 436, 61 S. W. 114; State v. Cherry, 32 Utah, 1, 60 Pac. 1103; Brown v. Epps, 91 Va. 726, 21 S. E. 119, 27 L. R. A. 676; Prison Ass'n v. Ashby, 93 Va. 667, 25 S. E. 898; Northwestern National Bank v. Superior, 103 Wis. 43, 79 N. W. 54; State v. Henderson, 4 Wyo. 535, 85 Pac. 517. Compare Britton v. Election Commissioners, 129 Cal. 837, 61 Pac. 1115, 51 L. R. A. 115.

²⁸ Taylor v. Place, 4 R. L. 324.

²⁹ Shumway v. Bennett, 29 Mich. 465; Taylor v. Porter, 4 Hill, 140, 40 Am. Dec. 274; Vanzant v. Waddel, 2 Yerg. 260; State Bank v. Cooper, id. 599; Jones' Heirs v. Perry, 10 id. 59; Greene v. Briggs, 1 Curtis, 311; State v. Dewa, R. M. Charlt. 400; Sears v. Cottrell, 5 Mich. 254. See Smith v. Judge, 17 Cal. 558; State

§ 7 (6). **The legislative power.**—It results from this division of the fundamental powers that the legislature is confined to the exercise of the law-making power; its sole function is the enactment of laws. None of these great powers are defined in constitutions. They are distributed by name, and, therefore, their scope and limits have to be determined from their intrinsic nature. They are deemed thus sufficiently distinguishable. A state legislature, by this grant of legislative power, is vested with all power which is of that nature, whether it had been exercised wholly by the parliament of Great Britain, or in part, by prerogative, by the crown.⁴⁰ As legislative power is merely a power to make

v. Dexter, 10 R. L. 841; *Murray's Lessee v. Hoboken, etc. Co.*, 18 How. 272, 15 L. Ed. 372.

⁴⁰ In *Merrill v. Sherburne*, 1 N. H. 203, Woodbury, J., said: "No particular definition of judicial power is given in the constitution, and considering the general nature of the instrument none was to be expected. Critical statements of the meanings in which all important words were to have been employed would have swollen into volumes; and when these words possessed a customary signification a definition of them would have been useless."

Lowrie, C. J., in *Reiser v. The William Tell Saving Fund Association*, 39 Pa. St. 146, said: "We must again insist that the making of laws and the application of them to cases as they arise are clearly and essentially different functions, and that one of them is allotted by the constitution to the legislature and the other to the courts." 9 Casey, 495. Chief Justice Gibson expressed this in *Greenough v. Greenough*, 1 Jones, 494: "Every tyro or sciolist knows that it is the prov-

ince of the legislature to enact, of the judiciary to expound, and of the executive to enforce."

In *Maynard v. Valentine*, 1 W. Coast Rep. 843, Greene, C. J., speaking of the distinction between legislative and judicial functions, said: "It could not be destroyed without destruction of one or the other function. For it consists in diversity of the deep-seated organic relations which court and legislature respectively bear to the central sovereignty which speaks and acts through them. The sovereign, through the legislative organ, speaks spontaneously, and imposes on that organ no obligation to reply to any petition. It speaks through its courts upon petition only, and obliges its courts to answer every petition. The voice of the court is explanatory, and assertative of that of the legislature; the voice of the legislature is determinative of that of the court. Legislatures declare about persons and things in general, and, in particular, what the sovereign will is. Courts declare what, according to that will, the

laws, its nature may be inferred from the definition of statutory law; for a statute formulates whatever is resolved, ordained or enacted by the forms of legislation in the exercise of that power.

§ 8 (7). **Statutory law in general.**—A statute is, in a general sense, the written will of the legislature rendered authentic by certain prescribed forms and solemnities,⁴¹ prescribing rules of action or civil conduct.⁴² This is comprehensive as applied to persons. “Statute law may, we think,” says Wilberforce, “be properly defined as the will of the nation expressed by the legislature, expounded by the courts of justice. The legislature, as the representative of the nation, expresses the national will by means of statutes. These statutes are expounded by the courts so as to form the body of the statute law.”⁴³ Mr. Austin says: “A law in the literal and proper sense of the word may be defined as a rule laid down for the guidance of an intelligent being by an intelligent being having power over him.”⁴⁴ He also says: “Legislative powers are powers of establishing laws and issuing other commands.”⁴⁵

In what capacity does a legislature act in issuing *other* commands? In other words, in what other way, or to what other end, may “legislative powers” act or issue commands than to establish laws? It would seem to be a truism that the product of law-making is law. The foregoing definitions confine law to persons. If it is so confined, then the legislature in the exercise of the law-making or legislative power may not legislate in regard to *things*. Nor should those doctrines and principles which have been accepted as part of the common law, relating to things, be regarded as law. The truth is that law is a *rule*, not necessarily a rule of conduct, though a rule of conduct is a law — a branch,

parties before them are bound or free to do or suffer. In fine, the legislature gives, and the court applies, the law.” 2 Wash. Ty. 8.

⁴¹ 1 Kent's Com. 447.

⁴² 1 Black. Com. 44.

⁴³ Wilb. St. L. 8.

⁴⁴ Austin's Jurisprudence, vol. 1, p. 3, § 2.

⁴⁵ Id., § 230.

not the whole of it. As a *rule* a statute may, besides prescribing a rule of civil conduct to sentient subjects, create or establish legal qualities and relations, operating as a fiat. Statutes may be institutive, creating and organizing legal entities and endowing them with qualities and powers — for example, public and private corporations. They create offices, courts, and other governmental agencies; they define crimes and torts; property, corporeal and incorporeal; titles, contracts; prescribe remedies and punishments; they impart a legal vitality to and regulate all the minutia of civil polity, including every social and business relation or institution deemed conducive to the well-being and happiness of the governed.⁴⁶

§ 9 (8). As a *rule* for persons, it is not a transient, sudden order from a superior to or concerning a particular person, but something permanent, uniform and universal.⁴⁷ It is a rule, because not merely advisory, but imperative; it emanates from the supreme power as a command, and does not depend for effect on the approval or consent of its subjects; it is a rule of *civil* conduct, because it does not extend into the subjective domain of morals or religion; it is prescribed, and therefore operates prospectively, though it may under certain circumstances and limitations operate retrospectively, as will be seen hereafter.⁴⁸ It is permanent, uniform and universal, not in the sense of being irrepealable or necessarily operating upon all the persons and things within the jurisdiction of the legislature, but because a law in general has a continuing effect and operates impartially throughout the state or some district of it, or upon the whole or a class of the public.⁴⁹

⁴⁶ License Cases, 5 How. 504, 583, 12 L. Ed. 256; *Munn v. Illinois*, 94 U. S. 113, 125, 24 L. Ed. 77.

⁴⁷ 1 Black. Com. 44.

⁴⁸ See *post*, ch. XVII.

⁴⁹ In *Slack v. Maysville, etc. R. R. Co.*, 18 B. Mon. 22, Marshall, J., speaking for the court, said: "It

would be difficult, perhaps impossible, to define the extent of the legislative power of the state, unless by saying that so far as it is not restricted by the higher law of the state and federal constitutions, it can do everything which can be effected by means of a law. It is

§ 10 (9). **Rules of action.**— Courts judicially formulate rules of action, but only by applying to a particular party an existing law. The court ascertains by trial that the party is within a rule which is law, and the facts necessary to its special operation upon him. What that law enjoins in general the court adjudicates and administers in the particular case. Thus, in a statute before me is this provision: "Every person guilty of fighting any duel, although no death or wound ensues, is punishable by imprisonment in the penitentiary not exceeding one year." This is a statute — a law. Mr. A. is accused of the offense and brought before a court of competent jurisdiction, by proper form of accu-

the great *supervising, controlling, creative and active* power in the state, subject to the fundamental restrictions just referred to. Whatever legislative power the whole commonwealth has, is by the constitution vested in the legislative department, which, representing the popular majorities in the several local divisions of the state, and under no other restraint but such as is imposed by the fundamental law, by its own wisdom and its own responsibilities, may regulate the conduct and command the resources of all, for the safety, convenience and happiness of all, to be promoted in such manner as its own discretion may determine. The legislative department performs and finishes its office by the mere enactment of a law."

The nature and scope of legislative power in the enactment of laws as treated in an article on "The Constitutionality of Local Option Laws" in 12 Am. L. Reg. (N. S.) 129, are too narrow. Contrary to the assumptions there made, it is believed that all valid

acts of the legislature, whether national or state, are laws. The enumerated powers granted to congress are legislative in their nature; no other would vest in a state legislature under a general grant of legislative power. Other clauses in the constitutions, requiring or regulating the action of the legislature in reference to specific subjects in the internal system or policy of the state, are not intended to confer or regulate any other than the power of making laws — saving the special jurisdiction in cases of impeachment, and such as relate to the autonomy of the separate branches or are incidental to the exercise of its legislative function. *Hope v. Deaderick*, 8 Humph. 1, 47 Am. Dec. 597; *Lusher v. Scites*, 4 W. Va. 11; *Myers v. Manhattan Bank*, 20 Ohio, 295; *Anderson v. Dunn*, 6 Wheat. 204-235, 5 L. Ed. 242; *Kilbourn v. Thompson*, 103 U. S. 168, 26 L. Ed. 377; *Von Holst*, Const. L., § 28. The taxing power is legislative. *Marr v. Enloe*, 1 Yerg. 452; *Lipscomb v. Dean*, 1 Lea, 546.

sation and by proper arrest, and not pleading guilty a trial takes place. The court ascertains by the verdict of a jury that A. is guilty of the acts denounced in the statute. The sentence based on that verdict is that "you, Mr. A., be imprisoned in the penitentiary one year." The statute was general that every person so guilty should be so imprisoned. That was making a law — prescribing a rule of conduct. The court having judicially ascertained that A. had done these acts applied the law to him — repeats the statutory rule of action on A. Enacting the rule is legislative; trying A. and applying the rule to him, repeating and formulating it for accomplishing the imprisonment provided for in the rule, is judicial.

§ 11 (10). **Legislative rules of action — Essential limitations.**— Even rules of action are not valid laws, if, when enacted by the legislature, they are judicial in their nature or trench on the jurisdiction and functions of the judiciary. The legislature may prescribe rules of decision which will govern future cases; these rules will have the force of law; so general rules of practice, regulating remedies and so operating as not to take away or impair existing rights, may be made applicable to pending as well as subsequent actions.⁵⁰ But it has no power to administer judicial relief, — it cannot decide cases, nor direct how existing cases or controversies shall be decided by the courts; it cannot interfere by subsequent acts with final judgments of the courts.⁵¹ It

⁵⁰ *Riggs v. Martin*, 5 Ark. 506, 41 Am. Dec. 103; *Smith v. Judge*, 17 Cal. 558; *United States v. Samperyac*, 1 Hempst. 118; *Cutts v. Hardee*, 38 Ga. 350; *Rathbone v. Bradford*, 1 Ala. 812; *Coosa R. S. B. v. Barclay*, 30 id. 120; *Hope v. Johnson*, 2 Yerg. 123; *Lockett v. Usry*, 28 Ga. 345; *Ralston v. Lothain*, 18 Ind. 303; *Evans v. Montgomery*, 4 Watts & S. 218; *Oriental Bank v. Freeze*, 18 Me. 109, 86 Am. Dec. 701; *Read v. Frankfort Bank*, 23 id. 818;

Woods v. Buie, 5 How. (Miss.) 285; *United States Bank v. Longworth*, 1 McLean, 85, Fed. Cases, No. 923; *Taggart v. McGinn*, 14 Pa. St. 155; *Van Norman v. Judge*, 45 Mich. 204, 7 N. W. 796.

⁵¹ "A legislative act is said to be one which predetermines what the law shall be for the regulation of future cases falling under its provisions, while a judicial act is a determination of what the law is in relation to some existing thing

cannot set aside, annul or modify such judgments,⁵² nor grant or order new trials,⁵³ nor direct what judgment shall be entered or relief given.⁵⁴ No declaratory act, that is, one professing to enact what the law now is or was at any past time, can affect any existing rights or controversies.⁵⁵

done or happened. . . . Whenever an act determines a question of right or obligation or of property as the foundation upon which it proceeds, such an act is to that extent judicial." *Wulzen v. Board of Supervisors*, 101 Cal. 15, 24, 35 Pac. 353, 40 Am. St. Rep. 17.

⁵² *Roche v. Waters*, 72 Md. 264, 19 Atl. 535, 7 L. R. A. 533; *Denny v. Mattoon*, 2 Allen, 361, 79 Am. Dec. 784; *Gilman v. Tucker*, 128 N. Y. 190, 28 N. E. 1040, 26 Am. St. Rep. 464, 13 L. R. A. 304; *Roberts v. State*, 30 App. Div. 106, 51 N. Y. S. 691; *State v. New York, N. H. & H. R. R. Co.*, 71 Conn. 43, 40 Atl. 925.

⁵³ *Atkinson v. Dunlap*, 50 Me. 111; *Griffin v. Cunningham*, 20 Gratt. 31; *Reid, Adm'r, v. Strider*, 7 id. 76, 65 Am. Dec. 120; *Calhoun v. McLendon*, 43 Ga. 405; *Reiser v. Wm. Tell, etc. Assoc.*, 39 Pa. St. 147; *Carleton v. Goodwin*, 41 Ala. 153; *O'Conner v. Warner*, 4 Watts & S. 227; *Arnold v. Kelley*, 5 W. Va. 446; *De Chastellux v. Fairchild*, 15 Pa. St. 18, 53 Am. Dec. 570; *Greenough v. Greenough*, 11 Pa. St. 489, 51 Am. Dec. 567; *McCabe v. Emerson*, 18 Pa. St. 111; *United States v. Klein*, 13 Wall. 128, 20 L. Ed. 519; *United States v. Samperyac*, 1 Hempst. 118; *Bagg's Appeal*, 43 Pa. St. 512, 82 Am. Dec. 588; *Taylor v. Place*, 4 R. I. 324; *Erie, etc. R. R. Co. v. Casey*, 1 Grant's Cas. 274; *Miller v. Fiery*, 8 Gill, 147; *Crane v. McGin-*

nis, 1 Gill & J. 463, 19 Am. Dec. 237; *Trask v. Green*, 9 Mich. 366; *Bates v. Kimball*, 2 D. Chip. 77; *Burch v. Newbury*, 10 N. Y. 374; *Commonwealth v. Johnson*, 42 Pa. St. 448; *Inhabitants of Durham v. Inhab. of L.*, 4 Greenl. 140; *Ex parte Darling*, 16 Nev. 98, 40 Am. Rep. 495; *Davis v. Village of Menasha*, 21 Wis. 491; *Kendall v. Dodge*, 8 Vt. 360; *United States v. Prospect Hill Cemetery*, 8 App. Cas. (D. C.) 2; *State v. Flint*, 61 Minn. 539, 63 N. W. 1113.

⁵⁴ *Janesville v. Carpenter*, 77 Wis. 288, 46 N. W. 128, 20 Am. St. Rep. 123, 8 L. R. A. 808; *Perkins v. Scales*, 2 Tenn. Cases, 235. The legislature cannot control the action of the court in settling a bill of exceptions. *Adams v. State*, 156 Ind. 596, 59 N. E. 24; *Johnson v. Gebhauer*, 159 Ind. 271, 64 N. E. 855.

⁵⁵ *Lindsay v. U. S. Savings & Loan Ass'n*, 120 Ala. 156, 24 So. 171, 42 L. R. A. 783; *Tilford v. Ramsey*, 43 Mo. 410; *People v. Supervisors*, 16 N. Y. 425, 432; *Ogden v. Blackledge*, 2 Cranch, 272, 2 L. Ed. 276; *Gordon v. Inghram*, 1 Grant's Cas. 152; *Dash v. Van Kleeck*, 7 John. 477, 5 Am. Dec. 291; *Mongeon v. People*, 55 N. Y. 613; *McLeod v. Burroughs*, 9 Ga. 213; *Lambertson v. Hagan*, 2 Pa. St. 25; *Peyton v. Smith*, 4 McCord, 476; *Hall v. Goodwyn*, id. 442; *Grigsby v. Peak*, 57 Tex. 142; *Van Norman v. Judge*, 45 Mich. 204. It was held (*Alvord*

§ 12 (11). The merits of every legal controversy depend on the rights of the parties as determined by the law as it was when the rights in question accrued, or the wrong complained of was done.⁵⁶ A statutory right, however, is inchoate until reduced to possession or fixed and perfected by a judgment.⁵⁷ It is judicial to determine what the law was or is; and the kind and measure of redress due to parties, founded upon the facts of a case, by application of that law. New laws cannot be passed to affect existing controversies, or to interfere with the administration of justice according to those principles.

To pass new rules for the regulation of new controversies is in its nature a legislative act; but if these rules interfere with the past or the present, and do not look wholly to the future, they violate the definition of a law as a rule of civil conduct; because no rule of civil conduct can-with consist-

v. Little, 16 Fla. 158) that an act extending the time to appeal, passed after the expiration of time allowed therefor by existing law, did not affect vested rights, because it applied only to the remedy. So does a statute of limitations; but an act would not be sustained which revived a right of action after it was barred by the existing law. *Girdner v. Stephens*, 1 Heisk. 280, 2 Am. Rep. 700; *Adamson v. Davis*, 47 Mo. 268; *Thompson v. Read*, 41 Iowa, 48; *Pitman v. Bump*, 5 Oreg. 17; *Wood on Lim.*, § 11. The legislature is not only incapable of performing judicial functions, but it can confer no other than judicial powers on the courts. *The Auditor v. Atchison, etc. R. R. Co.*, 6 Kan. 500, 7 Am. R. 575; *Burgoyne v. Supervisors*, 5 Cal. 9; *Dickey v. Hurlburt*, id. 843; *Hayburn's Case*, 2 Dall. 409; *Railway Co. v. Board Pub. Works*, 28

W. Va. 264. See *United States v. Ferreira*, 13 How. 40, 14 L. Ed. 42.

⁵⁶ *Pacific, etc. Co. v. Joliffe*, 2 Wall. 450, 17 L. Ed. 805; *Vanderkar v. Railroad Co.*, 13 Barb. 390; *People v. Supervisors*, 3 id. 332.

⁵⁷ *Norris v. Crocker*, 13 How. 429, 14 L. Ed. 210; *The Irresistible*, 7 Wheat. 551, 5 L. Ed. 520; *Calhoun v. McLendon*, 42 Ga. 407; *United States v. Mann*, 1 Gallison, 177, Fed. Cas. No. 15,718; *United States v. Passmore*, 4 Dall. 872; *Town of Guilford v. Supervisors*, 13 N. Y. 143; *Kampton v. Commonwealth*, 19 Pa. St. 329; *Stoeber v. Immell*, 1 Watts, 258; *Williams v. Commissioners*, 35 Me. 845; *Tivey v. People*, 8 Mich. 128; *Commonwealth v. Duane*, 1 Binn. 601, 2 Am. Dec. 497. It devolves on the courts, not the legislature, to determine the meaning of "head of a family," as used in the constitutional provision for a homestead.

ency operate upon what occurred before the rule itself was promulgated.⁵⁸ Whether in their inquiries the legislature and the courts proceed upon the same or different evidence does not change the nature of legislative acts. Nor can their inquiries, deliberations, orders and decrees be both judicial and legislative, because a marked difference exists between the functions of judicial and legislative tribunals. The former decide upon the legality of claims and conduct; the latter make rules upon which in connection with the constitution these decisions should be founded.⁵⁹ Legislative power prescribes rules of conduct for the future government of the citizen or subject; while judicial power punishes or redresses wrongs growing out of a violation of rules previously established. The distinction lies, in short, between a sentence and a rule.⁶⁰

§ 13 (12). Statutes have no extraterritorial effect—Comity.—Statutes derive their force from the authority of the legislature which enacts them; and hence, as a necessary consequence, their authority as statutes will be limited to the territory or country to which the enacting power is limited.⁶¹ It is only within these boundaries that the legis-

⁵⁸ *Merrill v. Sherburne*, 1 N. H. 204.

⁵⁹ *Id.*; *State v. Dews*, R. M. Charl. 400; *Bedford v. Shilling*, 4 S. & R. 401, 8 Am. Dec. 718; *Ogden v. Blackledge*, 2 Cranch, 273, 2 L. Ed. 276; *McLeod v. Burroughs*, 9 Ga. 213.

⁶⁰ *Ex parte Shrader*, 33 Cal. 283; *Cooley's Con. L.* 110, 111.

⁶¹ *Juilliard v. May*, 130 Ill. 87, 22 N. E. 477; *Warren v. First National Bank*, 149 Ill. 9, 38 N. E. 122, 25 L. R. A. 746; *Boston & Me. R. R. Co. v. Trafton*, 151 Mass. 229, 23 N. E. 829; *Healey v. Reed*, 153 Mass. 197, 26 N. E. 404; *Johnson v. Mut. Life Ins. Co.*, 180 Mass. 407, 62 N. E. 783; *Attorney-General v. Netherlands*

Ins. Co., 181 Mass. 522, 63 N. E. 950; *Mandell Brothers v. Fogg*, 182 Mass. 582; *Sanders v. St. Louis & N. O. Anchor Line*, 97 Mo. 26; *Stanley v. Wabash, etc. Ry. Co.*, 100 Mo. 435, 13 S. W. 709, 8 L. R. A. 549; *Connell v. Western Union Tel. Co.*, 108 Mo. 459, 18 S. W. 883; *State v. Gritzner*, 184 Mo. 512, 36 S. W. 39; *Rixhe v. Western Union Tel. Co.*, 96 Mo. App. 406, 70 S. W. 265; *Everett v. Morrison*, 69 Hun, 146, 23 N. Y. S. 377; *Greenville Nat. Bank v. Evans-Snyder-Buell Co.*, 9 Okl. 353, 60 Pac. 249; *Carson v. Railway Co.*, 88 Tenn. 646; *Becker v. La Crosse*, 99 Wis. 414, 75 N. W. 84, 67 Am. St. Rep. 874, 40 L. R. A. 829; *Frame v. Thor- mann*, 102 Wis. 653, 79 N. W. 39;

lature is law maker, that its laws govern people, that they operate of their own vigor upon any subject.⁶² No other laws have effect there as statutes. Statutes of other states, or national jurisdictions, are foreign laws, of which the courts do not take judicial notice. If relied upon they must be pleaded and proved as other facts.⁶³ In the absence of any evidence on the subject the laws of a foreign state are presumed to be the same as in the state of the forum.⁶⁴ A court will not presume or hold a foreign law to be invalid because such a law would be invalid under the constitution of its own state.⁶⁵ The construction put upon a statute of a foreign state by its highest court will be followed by the

Hilton v. Guyot, 159 U. S. 113, 16 S. C. Rep. 139, 40 L. Ed. 95; *McLoughlin v. Raphael Tuck Co.*, 191 U. S. 267. The act of congress admitting Missouri into the Union established the middle of the main channel of the Mississippi river as the eastern boundary of the state, but gave it concurrent jurisdiction over the entire width of the river. It was held that an action for wrongful death, occurring on the river east of the main channel, could be brought in Missouri under the Missouri statutes. *Sanders v. St. Louis & N. O. Anchor Line*, 97 Mo. 26.

⁶² *State v. Cutshall*, 110 N. C. 538, 15 S. E. 261, 16 L. R. A. 130.

⁶³ *Marcy v. Howard*, 91 Ala. 133, 8 So. 566; *Cummings v. Montague*, 116 Ga. 457; *Bank of Commerce v. Fuqua*, 11 Mont. 285, 28 Pac. 291, 28 Am. St. Rep. 461; *Mansur-Tebbetts Implement Co. v. Willet*, 10 Okl. 383, 61 Pac. 1066; *Howe v. Ballard*, 113 Wis. 375, 89 N. W. 186.

⁶⁴ *Barringer v. Ryder*, 119 Iowa, 121, 93 N. W. 56; *Smith v. Mason*, 44

Neb. 610, 63 N. W. 41; *Fisher v. Donovan*, 57 Neb. 361, 77 N. W. 778, 44 L. R. A. 388; *Greenville National Bank v. Evans-Snyder-Buell Co.*, 9 Okl. 353, 60 Pac. 249; *Osburne v. Blackburne*, 78 Wis. 209, 47 N. W. 175, 23 Am. St. Rep. 400, 10 L. R. A. 367; *Slaughter v. Bernard*, 88 Wis. 111, 59 N. W. 576; *Hyde v. German Nat. Bank*, 115 Wis. 170. It has been held that this presumption does not apply in case of penal statutes. *Schoenberg v. Adler*, 105 Wis. 645, 81 N. W. 1055.

⁶⁵ *Fidelity Ins., Trust & Safe Deposit Co. v. Nelson*, 30 Wash. 340. The court says: "Here there is proof of a law of a sister state, and, if we were to indulge in presumptions at all, we would presume that it was passed with all due formalities, is within the constitutional powers of the legislative body which passed it, and is a valid and existing law, rather than presume that, because our constitution prohibits such law, the Pennsylvania constitution must likewise do so."

courts of other states.⁶⁶ Statutes of other states may be proved and taken into consideration in proper cases, subject to the provisions of domestic statutes and of the constitution; but they are so considered only by the principles of the common and international law, originating in the comity which exists between nations and by force of the federal constitution between the states of the Union.⁶⁷

The observance or recognition of foreign laws rests in comity and convenience, and in the aim of the law to adapt

⁶⁶ *Fred. Miller Brewing Co. v. Capital Ins. Co.*, 111 Ia. 590, 82 N. W. 1023, 82 Am. St. Rep. 529; *Supreme Council v. Green*, 71 Md. 263, 17 Atl. 1048, 17 Am. St. Rep. 527; *Bronson v. St. Croix Lumber Co.*, 44 Minn. 348, 46 N. W. 570; *Kimball v. Davis*, 52 Mo. App. 194; *Kulp v. Fleming*, 65 Ohio St. 321, 62 N. E. 834, 87 Am. St. Rep. 611; *Howe v. Ballard*, 113 Wis. 875, 89 N. W. 136. The construction put by the courts of one state upon the statute of another state does not give rise to a federal question, but otherwise if its validity is impugned. *Glenn v. Garth*, 147 U. S. 360, 13 S. C. Rep. 350, 37 L. Ed. 203; *Lloyd v. Matthews*, 155 U. S. 222, 15 S. C. Rep. 70, 39 L. Ed. 128; *Banholzer v. N. Y. Life Ins. Co.*, 178 U. S. 402, 20 S. C. Rep. 972, 44 L. Ed. 1124; *Johnson v. N. Y. Life Ins. Co.*, 187 U. S. 491, 23 S. C. Rep. 194.

⁶⁷ *Mandel v. Swan Land & Cattle Co.*, 154 Ill. 177, 40 N. E. 462, 45 Am. St. Rep. 124, 27 L. R. A. 313; *Shaw v. Brown*, 35 Miss. 246, 316; *Minor v. Cardwell*, 37 Mo. 853; *Clarke v. Pratt*, 20 Ala. 470; *Harrison v. Harrison*, id. 629, 56 Am. Dec. 227; *Cockrell v. Gurley*, 26 id. 405; *Woodward v. Donally*, 27 id. 196; *Mobile & O. R. Co. v. Whit-*

ney, 39 id. 471; *Bank of Augusta v. Earle*, 13 Pet. 519, 10 L. Ed. 274; *Carey v. Cincinnati, etc. R. R. Co.*, 5 Iowa, 357; *Debevoise v. N. Y. etc. R. R. Co.*, 98 N. Y. 377, 50 Am. R. 683; *Land Grant Railway v. Commissioners*, 6 Kan. 252; *Pickering v. Fisk*, 6 Vt. 107; *Andrews v. Herriot*, 4 Cow. 508, and note; *Saul v. His Creditors*, 5 Mart. (N. S.) 569, 16 Am. Dec. 212; 3 Am. & Eng. Cyclop. L. 502; *Nichols v. Burlington, etc. Ry Co.*, 78 Minn. 43, 80 N. W. 776.

Articles 798 and 799 of the penal code of Texas provide for the punishment of robbery, theft, and the knowingly receiving of stolen property, though perpetrated in a foreign country or state, if the property was brought into the state, provided that by the law of the foreign country or state the inculpatory act would have been the offense charged in the indictment. It was held in *Cummins v. State*, 12 Tex. App. 121, that in such a case the law of the foreign country or state is an element of the offense and an issuable fact to be alleged in the indictment, but the indictment need not aver that the accused was punishable or amenable to the laws of the foreign country or state.

its remedies to the great ends of justice.⁶⁸ But there is a limit to this principle of comity; and cases may and do arise where the observance of foreign laws would neither be convenient nor answer the purposes of justice. Foreign laws are not regarded where they conflict with our own regulations, our local policy, or do violence to our views of religion or public morals.⁶⁹ The principles of comity do not require the courts of one state to enforce rights under the statutes of another, to the prejudice of its own citizens, nor when complete justice cannot be done.⁷⁰ “‘Comity,’ in the legal sense,” says the supreme court of the United States, “is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.”⁷¹

Whatever force and obligation the laws of one country have in another depends upon the laws and municipal regulations of the latter; that is to say, upon its own proper jurisprudence and polity, and upon its own express or tacit consent. A municipality of one state by accepting a statute of another state cannot bind itself to perform the conditions contained in such statute. The city of La Crosse was authorized by the legislature of Wisconsin to construct a bridge and approaches across the Mississippi river to some point in Minnesota. The legislature of Minnesota authorized the city to construct and maintain a wagon road from a certain highway in the latter state to the boundary line

⁶⁸ *Pickering v. Fisk*, 6 Vt. 107; Story, Conf. L., § 35.

⁶⁹ *Id.*; *Dale v. Atchison, etc. R. R. Co.*, 57 Kan. 601, 47 Pac. 521; *Mandell Bros. v. Fogg*, 182 Mass. 582; *Hancock National Bank v. Far-num*, 20 R. L. 466, 40 Atl. 841.

⁷⁰ *Marshall v. Sherman*, 148 N. Y. 9, 42 N. E. 419, 51 Am. St. Rep. 654, 84 L. R. A. 757.

⁷¹ *Hilton v. Guyot*, 159 U. S. 113, 163, 16 S. C. Rep. 139, 40 L. Ed. 95.

between the two states on condition of being liable for injuries to travelers by reason of any improper construction or want of repair in the road. The statute was accepted and the bridge and road built. In a suit to recover for such injuries, it was held that the city was powerless to bind itself in such manner and that it was not liable.⁷²

When a statute or the unwritten or common law of the country forbids the recognition of the foreign law, the latter is of no force whatever. When both are silent, then the question arises, which of the conflicting laws is to have effect. Generally, force and effect will be given by any state to foreign laws in cases where from the transactions of the parties they are applicable, unless they affect injuriously her own citizens, violate her express enactments, or are *contra bonos mores*.⁷³

The courts of one state will not enforce the penal,⁷⁴ nor the police, revenue or political laws of another.⁷⁵ Whether a statute is penal in the sense that it will not be enforced

⁷² Becker v. La Crosse, 99 Wis. 414, 75 N. W. 84, 67 Am. St. Rep. 874, 40 L. R. A. 829. The court says: "To permit the city, no matter how desirable it may be, to expend its money, and to obtain rights and privileges, beyond its own limits, and beyond the limits over which its creator has jurisdiction, would be unwise and dangerous, to say the least, and against public policy."

⁷³ Lawrence's Wheaton (2d ed.), 162; Bouv. L. Dic., tit. Conflict of Laws; Story, Conf. L., §§ 23, 29; Minor v. Cardwell, 37 Mo. 354, 90 Am. Dec. 390; 3 Am. & Eng. Cyclop. L. 502, 503; Caldwell v. Vanvlissingen, 9 Hare, 425; Fenton v. Livingstone, 3 Macq. H. L. Cas. 497; Gardner v. Lewis, 7 Gill, 877; Beard v. Basye, 7 B. Mon. 144.

⁷⁴ The Antelope, 10 Wheat. 66,

123; Scoville v. Canfield, 14 John. 838; Commonwealth v. Green, 17 Mass. 515; Folliott v. Ogden, 1 H. Black. 135; Ogden v. Folliott, 3 T. R. 733; Wolff v. Oxholm, 6 M. & S. 99; King of Two Sicilies v. Wilcox, 1 Sim. (N. S.) 301; Holman v. Johnson, 1 Cowp. 343; James v. Catherwood, 3 D. & R. 190 (16 Eng. C. L. 165); Randall v. Van Rensselaer, 1 John. 95; Stevens v. Brown, 20 W. Va. 450; Woods v. Wicks, 7 Lea, 40. See South Carolina R. R. Co. v. Nix, 68 Ga. 572; Whart. Am. L., § 253.

⁷⁵ James v. Catherwood, 3 D. & R. 190; Planche v. Fletcher, 1 Doug. 251; Bristol v. Sequeville, 5 Exch. 275; Quarrier v. Colston, 1 Phil. 147. See Henry v. Sargeant, 13 N. H. 321, 40 Am. Dec. 143.

in a foreign state is often a difficult question and is one upon which there is a difference of opinion. The supreme court of the United States says: "The question whether a statute of one state, which in some respects may be called penal, is penal in the international sense, so that it cannot be enforced in the courts of another state, depends upon the question whether its purpose is to punish an offense against the public justice of the state, or to afford a private remedy to a person injured by the wrongful act."⁷⁶ Crimes are in their nature local, and the jurisdiction of them is local.⁷⁷ They are cognizable and punishable exclusively in the country where they are committed.⁷⁸

§ 14 (13). As every nation possesses an exclusive sovereignty and jurisdiction within its own territory, its laws affect and bind directly all property, whether real or per-

⁷⁶ *Huntington v. Attrill*, 146 U. S. 657, 673, 18 S. C. Rep. 224, 36 L. Ed. 1128. This case arose out of the following facts: A statute of New York provided that, if any certificate or report made by the officers of a corporation was false in any material representation, all who had signed it should be liable for all debts of the corporation contracted while they were in office. A judgment was obtained in New York upon such a liability and suit brought on the judgment in Maryland. The supreme court of that state held that the judgment was founded on a penal liability and dismissed the suit. (70 Md. 191, 16 Atl. 651.) The case was removed to the federal supreme court, which reversed the decision of the state court and sustained the action. In speaking of the statute the court says: "As the statute imposes a burdensome liability on the officers for their wrongful act, it may well

be considered penal, in the sense that it should be strictly construed. But as it gives a civil remedy, at the private suit of the creditor only, and measured by the amount of his debt, it is as to him clearly remedial. To maintain such a suit is not to administer a punishment imposed upon an offender against the state, but simply to enforce a private right secured under its laws to an individual. We can see no just ground, on principle, for holding such statute to be a penal law, in the sense that it cannot be enforced in a foreign state or country." For a further discussion of the question see *Taylor v. Western Union Tel. Co.*, 95 Iowa, 740, 64 N. W. 660; *Kimball v. Davis*, 52 Mo. App. 194; *Gardner v. New York & New Eng. R. R. Co.*, 17 R. I. 790, 24 Atl. 831.

⁷⁷ *Rafael v. Verelst*, 2 W. Black. 1058.

⁷⁸ Story, Conf. L., § 620.

sonal, within that territory; and all persons who are resident within it, whether natural-born subjects or aliens, and also all contracts made and acts done within it. A state may, therefore, regulate the manner and circumstances under which such property, in possession or in action, within it shall be held, transmitted, bequeathed, transferred or sued for; the condition, capacity, and state of all persons within it; the validity of contracts and other acts done within it; the resulting rights and duties growing out of these contracts and acts; and the remedies and modes of administering justice in all cases calling for the interposition of its tribunals to protect and vindicate and secure the wholesome agency of its own laws within its own domains.⁷⁹

Transitory rights accruing under any municipal laws may be enforced in another jurisdiction, subject to the principles just stated, that they be not repugnant to its policy or prejudicial to its interests; and personal states and relations, originating under and valid by the law of the domicile or place of contract, will be universally recognized as valid, subject to the same condition.⁸⁰ A legal title, duly acquired in any one country, is a good title over all the world.⁸¹

§ 15 (14). Where either by common law or statute a right of action has become fixed and a legal liability incurred, if transitory, it may be enforced in the courts of any state which can obtain jurisdiction of the defendant, provided it is not against the public policy of the laws of the state

⁷⁹ Story, Conf. L., §§ 18, 29, 30; Chicago, etc. R. R. Co. v. Doyle, 60 Miss. 977; Debovoise v. N. Y. etc. R. R. Co., 98 N. Y. 377, 50 Am. Rep. 683; Phillips v. Hunter, 2 H. Black. 402; Sill v. Worswick, 1 H. Black. 672; Campbell v. Hall, 1 Cowp. 208; Liverm. Dis. 26-30; Hyde v. Wabash, etc. R. R. Co., 61 Iowa, 441, 47 Am. Rep. 820; Lawrence's Wheat. 160, 161; Davis v. Jacquin, 5 Harr. & J. 100.

⁸⁰ Nashville, etc. R. R. Co. v. Foster, 10 Lea, 351; State Bank Receiver v. Plainfield Bank, 84 N. J. Eq. 450; Whart. Am. L., ch. V; Bank of Augusta v. Earle, 13 Pet. 519, 589, 10 L. Ed. 274; Sherwood v. Judd, 3 Bradf. 419; Sanford v. Thompson, 18 Ga. 554.

⁸¹ Simpson v. Fogo, 1 H. & M. 195; Crispin v. Doglioni, 3 S. & T. 96; Beard's Ex'r v. Basye, 7 B. Mon. 144.

where it is sought to be enforced. The statute has no extraterritorial force, but rights under it will always in comity be enforced, if not against the policy of the laws of the forum. In such cases the law of the place where the right was acquired or the liability was incurred will govern as to the right of action,⁸³ while all that pertains merely to the remedy will be controlled by the law of the state where the action is brought.⁸⁴

§ 16 (15). **Extraterritorial operation of laws in case of colonization of a new country.**—It was declared by the lords of the privy council in England, over a hundred and fifty years ago, upon appeal from the foreign plantations, that if there be a new uninhabited country found out by English subjects, as the law is the birthright of every subject, so wherever they go they carry the laws with them; therefore, such new found country is governed by the laws of England.⁸⁵ English statutes enacted prior to the settle-

⁸³ *Herrick v. Minneapolis, etc. R. R. Co.*, 81 Minn. 11, 47 Am. R. 771; *Knight v. West Jersey R. R. Co.*, 108 Pa. St. 250, 56 Am. R. 200; *Den- nick v. R. R. Co.*, 103 U. S. 11, 26 L. Ed. 439; *Leonard v. Columbia St. Nav. Co.*, 84 N. Y. 48, 38 Am. R. 491; *Central R. R. Co. v. Swint*, 73 Ga. 651; *Morris v. Chicago, etc. R. R. Co.*, 65 Iowa, 727, 23 N. W. 143, 54 Am. R. 39; *Shedd v. Moran*, 10 Ill. App. 618; *Ramsey v. Glenn*, 33 Kan. 271, 6 Pac. 265; *Boyce v. Wabash Ry. Co.*, 63 Iowa, 70, 19 N. W. 210, 50 Am. R. 730; *Keenan v. Stimson*, 32 Minn. 377, 20 N. W. 364; *Bishop v. Globe Co.*, 135 Mass. 182; *Taylor v. Penn. Co.*, 78 Ky. 348, 39 Am. R. 244. See *Willis v. R. R. Co.*, 61 Tex. 432; *Vawter v. Pac. Ry. Co.*, 84 Mo. 679, 54 Am. R. 105.

⁸⁴ *Id.*; *Burlington, etc. R. R. Co. v. Thompson*, 31 Kan. 180, 47 Am. R. 497; *Mooney v. Union Pacific R. R.*

Co., 60 Iowa, 346, 14 N. W. 343. "A contract, so far as concerns its formal making, is to be determined by the law of the place where it is solemnized, unless the *lex situs* of property disposed of otherwise requires; so far as concerns its interpretation, by the law of the place where its terms are settled, unless the parties had the usages of another place in view; so far as concerns the remedy, by the law of the place of suit; and so far as concerns its performance, by the law of the place of performance." Whart. Conf. L. (2d ed.), § 401.

⁸⁵ *Mem. 2 P. Wms.* 75; 1 Black. Com. 107; *Blankard v. Galdy*, 2 Salk. 411; *Dutton v. Howell*, Show. P. C. 32; *Adj.-Gen. v. Ranees Sur-nomoye Dossee*, 9 Moore (Ind. App.), 387; *Commonwealth v. Leach*, 1 Mass. 60; *Commonwealth v. Knowlton*, 2 id. 534; *Boehm v.*

ment of the colonies in America were brought thither with the common law; or rather the common law, and the statutes amendatory of it, by the colonists from England, as a birthright; not to operate of their own vigor in the colonies, as statutes, but as part of the unwritten law. The colonists brought the laws of the mother country as they brought the mother tongue; not all the laws, but such as were adapted to their needs in the new country under the novel conditions and circumstances which there existed.⁸⁵

§ 17 (16). The existence of this law in the colonies was recognized and sanctioned by the royal charters, subject to modification by colonial usage and legislation. Our colonial ancestors could live under the old laws, or make new ones. When they legislated, their own laws governed them; when they did not, the laws they brought with them were their rules of conduct.⁸⁶ The English statutes, thus imported, though the written law in England, and there in force as the expression of the sovereign will, did not cling to the emigrant and attend him to the colonies against his will to preserve his subjection to the crown; but he brought it as a boon for his protection.⁸⁷ In the

Engle, 1 Dall. 15; *Bogardus v. Trinity Church*, 4 Paige, 198. See Chalmers' Colonial Op. 206, 232.

⁸⁵ *State v. Rollins*, 8 N. H. 550, 561; *Commonwealth v. Knowlton*, 2 Mass. 534; *Patterson v. Winn*, 5 Pet. 233, 8 L. Ed. 108; *Clawson v. Primrose*, 4 Del. Ch. 648; *O'Ferrall v. Simplot*, 4 Iowa, 400; *Vidal v. Girard's Heirs*, 2 How. 128, 11 L. Ed. 205; *Webster v. Morris*, 66 Wis. 366, 28 N. W. 353, 57 Am. R. 278; *Dodge v. Williams*, 46 Wis. 92; *Nelson v. McCrary*, 60 Ala. 301.

⁸⁶ *Sackett v. Sackett*, 8 Pick. 309; 1 Kent's Com. 473; *Commonwealth v. Knowlton*, *supra*.

⁸⁷ The declaration of Dr. Franklin quoted by Mr. Wharton (Whar-

ton's Am. L., § 22, note) truly states the force of English laws brought to this country by the colonists. He said: "The settlers of colonies in America did not carry with them the laws of the land as being bound by them wherever they should settle. They left the realm to avoid the inconveniencies and hardships they were under where some of these laws were in force, particularly ecclesiastical laws, those for the payment of tithes, and others. Had it been understood that they were to carry those laws with them, they had better have stayed at home among their friends unexposed to the risks and toils of a new settlement. They carried with

colonies these statutes were interwoven with the common law. Their authority was the same as that which gave force and sanction to the common law; the force of each depended on the same consideration — the presence of this spirit in the emigrant's mind and their adaptation to his condition and circumstances in the colonies. In 1774 the congress declared the right of the colonies to the common law and statutes of the mother country.⁸⁸

§ 18 (17). English statutes passed after the establishment of the colonies.— The colonies were subject to the authority of parliament; they were a part of the British domain.⁸⁹ It could, and to some extent it did, legislate directly for their government. But its enactments did not

them a right to such part of the laws of the land as they should judge advantageous or useful to them: a right to be free from those that they thought hurtful, and a right to make such others as they should think necessary, not infringing the general rights of Englishmen; and such new laws as they were to form as agreeable as might be to the laws of England." See speech of Burke on moving resolutions of conciliation, March 22, 1775.

⁸⁸ Journal of Cong. Oct. 14, 1774.

⁸⁹ In a late work, entitled "Parliamentary Government in the British Colonies," by Alpheus Todd, p. 128, it is said: "Subject, however, to the constitutional oversight and discretion of the crown, by which all colonial legislation is liable to be controlled or annulled, if exercised unlawfully or to the prejudice of other parts of the empire, complete powers of legislation appertain to all duly constituted colonial governments. Every local legislature, whether created by charter from the crown or by im-

perial statute, is clothed with supreme authority, within the limits of the colony, to provide for the peace, order and good government of the inhabitants thereof. (See Baron Burke's judgment in *Kielley v. Carson*, 4 Moore's Privy Council Rep. 85.) This supreme legislative authority is subject, of course, to the paramount supremacy of the imperial parliament over all minor and subordinate legislatures within the empire. The functions of control exercisable by the imperial legislature are practically restrained, however, by the operation of certain constitutional principles. . . . It may suffice to observe that the right of local self-government conceded to all British colonies wherein representative institutions have been introduced confers upon the local legislature, with co-operation and consent of the crown, as an integral part of such institution, ample and unreserved powers to deliberate and determine absolutely in regard to all matters of local concern."

extend to the colonies unless the intention to so extend them was manifested in the statutes.⁹⁰ Nor did such statutes, in which no such intention was expressed, become part of the unwritten law of the colonies.⁹¹

In some instances, statutes of England passed after the emigration, and not in terms made applicable to the colonies, were adopted by the colonial courts; thus by long practice they acquired the authority of law.⁹² By statutory and constitutional provision, the common law and English statutes, prior to specified dates, have been very generally adopted, or assumed by the courts to be in force so far as consistent with our condition and system of government, not only by states formed from the colonies, but in the newer states.⁹³ The legislative and juridical history of the colonies does not confirm the theory that English laws were imposed on the colonies by authority of parliament, or that their adoption is traceable alone and everywhere to the nationality of the colonists. They unconsciously, by usage and custom, adopted laws adapted to their situation and needs, according to such enlightenment as they had, under the conjoint influence of dissenting religion and national bias. They legislated to the same end, and under the same influence; independently of the crown, despite the restrictions in their constitutions, and the practice or requirement in some cases to legislate in the name of the king and the ostensible recognition of his veto power.⁹⁴

⁹⁰ *McKineron v. Bliss*, 31 Barb. 180. See *Brice v. State*, 2 Overt. 254; *Egnew v. Cochrane*, 2 Head, 329.

⁹¹ *Matthews v. Ansley*, 31 Ala. 20; *Carter v. Balfour*, 19 Ala. 829; *Sackett v. Sackett*, 8 Pick. 809; *Commonwealth v. Knowlton*, 2 Mass. 534.

⁹² *Commonwealth v. Knowlton*, 2 Mass. 534.

⁹³ *Wunderle v. Wunderle*, 144 Ill. 40, 83 N. E. 195, 19 L. R. A. 84;

Commonwealth v. Knowlton, 2 Mass. 534; *Conrad v. De Montcourt*, 138 Mo. 311, 89 S. W. 805; *Reno Smelting, Milling & Reduction Works v. Stevenson*, 20 Nev. 269, 21 Pac. 317, 19 Am. St. Rep. 364; *McKennon v. Winn*, 1 Okl. 327, 33 Pac. 582, 22 L. R. A. 501; *Carson v. Center*, 33 Ora. 512, 52 Pac. 506; *Morris v. Vanderen*, 1 Dall. 64, 67; *Respublica v. Mesca*, id. 73.

⁹⁴ Edmund Burke, in his speech in moving resolutions of concilia-

The original British colonies had been practically self-governing, and the result of the revolution was to confirm their right of self-government. The people of the several colonies, in provisional union, won in that struggle the sovereignty of themselves. The republican system which replaced the colonial constitutions abrogated only the prior laws which were inconsistent with the genius and form of the new government.

§ 19 (18). The first settlements were not all made by English people, nor were all the English settlements made by persons of the same class or from the same motives. Von Holst has truly remarked, that "the thirteen colonies had

tion March 22, 1775, said: "When I know that the colonies in general owe little or nothing to any care of ours, and that they are not squeezed into this happy form by the constraints of watchful and suspicious government, but that, through a wise and salutary neglect, a generous nature has been suffered to take her own way to perfection — when I reflect upon these effects, when I see how profitable they have been to us, I feel the pride of power sink, and all presumption in the wisdom of human contrivances melt and die away within me,—my vigor relents,—I pardon something to the spirit of liberty." Having addressed a series of considerations to show the futility and inexpediency of employing force against the revolting colonies, he said: "Lastly, we have no sort of *experience* in favor of force as an instrument in the rule of our colonies. Their growth and their utility has been owing to methods altogether different. Our ancient indulgence has been said to be pursued to a

fault. It may be so; but we know, if feeling is evidence, that our fault was more tolerable than our attempt to mend it, and our sin more salutary than our penitence. . . . But there is still behind a third consideration, concerning this object, which serves to determine my opinion on the sort of policy which ought to be pursued in the management of America, even more than the population and its commerce; I mean its *temper and character*. In this character of Americans, a love of freedom is the predominating feature which marks and distinguishes the whole; and as an ardent is always a jealous affection, your colonies become suspicious, restive, and untractable, whenever they see the least attempt to wrest from them by force, or shuffle from them by chicane, what they think the only advantage worth living for. This fierce spirit of liberty is stronger in the English colonies, probably, than in any other people of the earth, and this from a great variety of powerful causes."

been founded at very different times and under very different circumstances. Their whole course of development, their political institutions, their religious views and social relations, were so divergent, the one from the other, that it was easy to find more points of difference than of similarity and comparison. Besides, commercial intercourse between the distant colonies, in consequence of the great extent of their territory, the scantiness of the population, and the poor means of transportation at the time, was so slight, that the similarity of thought and feeling, which can be the result only of a constant and thriving trade, was wanting."⁹⁵ It is not surprising, therefore, that the same English statutes were not equally applicable to the local condition in all the colonies.

In Dana's Abridgment⁹⁶ it is said, "there is no question more difficult to be answered than this: 'What British statutes were adopted in the British colonies?' In the chartered colonies but few were adopted and practiced upon; in the proprietary colonies, not many; in the royal colonies, usually a great many."

§ 20 (19). Continuance of laws after a change of sovereignty.—Laws, customary and statutory, continue in force, though they originate under a sovereign whose power has ceased by cession of the country and all political jurisdiction, or by conquest. "The usage of the world is," says Chief Justice Marshall, "if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace. If it be ceded by the treaty the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed; either on the terms stipulated in the treaty of cession, or on such as its new master shall impose. On such transfer of territory, it has never been held that the relations of the inhabitants with each other undergo any change. Their relations with their

⁹⁵ Von Holst, Const. Hist. U. S., vol. I, p. 2. ⁹⁶ Vol. 6, ch. 196, art. 7.

former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their country transfers the allegiance of those who remain in it; and the law, which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly created power of the state."⁹⁷ Among civilized nations having established laws, the rule is that laws, usages and municipal regulations, in force at the time of the conquest, remain in force until changed by the new sovereign.⁹⁸ For a still stronger reason, this would be true in case of acquisitions by purchase and cession.⁹⁹

⁹⁷ *The American Ins. Co. v. Canter*, 1 Pet. 541, 7 L. Ed. 242; *United States v. Percheman*, 7 id. 51, 8 L. Ed. 604; *Mitchel v. United States*, 9 Pet. 711, 9 L. Ed. 288; *Mitchell v. Tucker*, 10 Mo. 262; *Leitensdorfer v. Webb*, 20 How. 176, 15 L. Ed. 891; *Langdeau v. Hanes*, 21 Wall. 521, 22 L. Ed. 606; *Chicago, etc. R. R. Co. v. McGlinn*, 114 U. S. 542, 5 S. C. Rep. 1005, 29 L. Ed. 270; *Whart. Am. L.*, § 154.

⁹⁸ *United States v. Powers' Heirs*, 11 How. 577, 13 L. Ed. 817; *Chew v. Calvert*, 1 Miss. (Walk.) 54; *Fowler v. Smith*, 2 Cal. 89, 568; *Blankard v. Galdy*, 2 Salk. 411; *Macoleta v. Packard*, 14 Cal. 179; *Campbell v. Hall*, 1 Cowp. 209.

Fowler v. Smith, 2 Cal. 89, 568, was a case which arose before there was any legislation of the state of California changing the original Mexican law of interest. It was an action to foreclose a mortgage for purchase-money. There was an

express promise to pay interest at two per cent. per month. It was stated that by the law of Mexico all contracts to pay a higher rate than six per cent. per annum, either upon money loaned or otherwise, were void. Murray, J., speaking for the court, said: "I cannot approach the point [error having been alleged to the ruling of the trial court that the contract was not usurious] without great hesitation, well knowing that I shall have to contend with what, by many, is considered the settled rule upon this subject. But the frequency of these pleas, and the growing disposition of counsel to apply the principles of the civil or Mexican law to every contract entered into before the passage of the act abolishing all laws previously existing in California, require that some adjudication should be had which may govern these cases for the future. The argument of the ap-

⁹⁹ *United States v. Powers' Heirs*, 11 How. 577, 13 L. Ed. 817; *McNair v. Hunt*, 5 Mo. 800, 808.

§ 21 (20). Laws of states in rebellion.—The laws of the insurgent states passed during the rebellion, not enacted in

pellant is based upon the well-recognized principle of international law that the laws of a ceded country remain in force until changed by the conquering or acquiring power. This principle is to be found in almost every work upon the subject of national law, and is reiterated and affirmed by the courts of England and the United States. Its application to this case can, however, only be determined by an examination of the rule and the particular circumstances under which it is sought to be applied.

“The law of nations is said to be founded on right, reason, sound morality and justice; but although it is said to be binding upon nations in their intercourse and transactions, still we find the courts of the United States and Europe in many instances differing in their application of the rules, and even disregarding them. As the world has advanced in civilization and learning, the influence of religion has been felt and recognized by the christian countries of Europe in their intercourse with each other. War has been stripped of many of its most disgusting features. It is no longer considered as the normal condition of man and nations; but only justifiable when resorted to to preserve national honor, prosperity and happiness.

. . .

“In an acquired territory containing a population governed in their business and social relations

by a system of laws of their own, well understood and generally accepted, it is but reasonable that the inhabitants should continue to regulate their conduct and commercial transactions by their own laws, until the same are changed. The reason is obvious and founded, in many instances, on the difference of language and systems of jurisprudence, the peculiar circumstances of the country, the confusion consequent on such change, and the time necessary to ascertain the applicability of the new laws. It will be observed that the rule presupposes that the acquired country contains a population governed by well settled laws of their own. Let us inquire whether these reasons apply with equal force to this case.

“California, at the time of its acquisition by the United States, contained but a sparse population. It had long been looked upon as one of the outposts of civilization. Its commercial, agricultural and mineral resources undeveloped, it was considered of little importance by the Mexican government. The body of Mexican laws had been extended over it; but there was nothing upon which they could act, and they soon fell into disuse. The system of government was patriarchal, and administered without much regard to the forms of law, which were scarcely alike in any two districts. Such was the state of the country when the discovery of our mineral wealth roused the

aid of the rebellion but relating to the domestic affairs of the people of the state as a community, were valid after the war and the restoration of the states to all their rights

whole civilized world to its importance. In a few months the emigration from older states exceeded five times the original population of the country. A state government was immediately formed to meet the wants of this unexpected population. The whole world was amazed by our sudden progress; and even the federal government, startled from her usual caution by so novel a spectacle, beheld us take our place as a sovereign state, before her astonishment had subsided. Emigration brought with it business, litigation, and the thousand attendants that follow in the train of enterprise and civilization. The laws of Mexico, written in a different language, and founded on a different system of jurisprudence, were to them a sealed book. The necessities of trade and commerce required prompt action. This flood of population had destroyed every ancient landmark; and finding no established laws or institutions, they were compelled to adopt customs for their own government. The proceedings in courts were conducted in the English language; and justice was administered by American judges without regard to Mexican laws. Custom was for all purposes law. No law concerning usury was recognized or supposed to exist. Under this peculiar system this country acquired its present wealth and prosperity. But it would have been much bet-

ter for the permanent interests of this country, that its progress had been less rapid, if, after escaping from the tutelage of a territorial government, we are to be fettered by the dead carcass of a law which expired at its birth, for want of human transactions on which to subsist; the application of which would overturn almost every contract entered into before the act abolishing all laws, etc,—would unhinge business and entirely destroy confidence in the country.

“There is no case like the present to be found in the history of the world. In every instance cited in the books the acquired country had a population of its own, governed by known laws; and the rate of emigration had been small, compared to the number of the original inhabitants. History may be searched in vain for an instance parallel with the emigration to this country. If it would be unjust to compel a densely populated state to take notice of the laws of the conqueror or acquiring power, without any other act than that of submission or cession, it would be still more unjust in this country, where the American population so greatly outnumbered the natives, to compel us to apply their law, instead of our own, to contracts. In this case, the rule consequent upon the discovery of an uninhabited territory might almost apply; and to construe these contracts by a system of laws not adapted to the age

in the Union.¹ The same general form of government, the same general laws for the administration of justice and the protection of private rights, which had existed in the states prior to the rebellion, remained during its continuance and afterwards. As far as the acts of the states did not impair, or tend to impair, the supremacy of the national authority, or the just rights of the citizens under the constitution, they have, in general, been treated as binding.²

These laws, necessary in their recognition and administration to the spirit of our institutions, altering the plain meaning of the parties, and giving to them conditions which were never intended, would work the grossest injustice."

A rehearing was granted, and at a subsequent term a different conclusion was arrived at, and the foregoing views were rejected. A majority of the court, by Heydenfeldt, J., said: "When the territory now comprised in the state of California was under Mexican dominion, its judicial system was that of the Roman law, modified by Spanish and Mexican legislation. Upon the formation of the present state government *that system was ordained by a constitutional provision* to be continued until it should be changed by the legislature." 2 Cal. 568. See *Ryder v. Cohn*, 37 Cal. 69, per Rhodes, J., dissenting.

When the King of England conquers a country, there, the conqueror, by saving the lives of the people conquered, gains a right and property in such people, in consequence of which he may impose upon them such laws as he pleases. But until such laws are given by the conquering prince, the laws and customs of the conquered country hold place, unless they

are contrary to the conqueror's religion, enact something *malum in se*, or are silent; in all such cases the laws of the conquering country prevail. 2 P. Wms. 75.

¹ *Horn v. Lockhart*, 17 Wall. 570, 21 L. Ed. 657; *Texas v. White*, 7 Wall. 700, 19 L. Ed. 227; *Sprott v. United States*, 20 Wall. 459, 22 L. Ed. 871, 8 Ct. of Cl. 499; *Williams v. Bruffy*, 96 U. S. 176, 24 L. Ed. 716; *Watson v. Stone*, 40 Ala. 451, 91 Am. Dec. 484; *Home Ins. Co. v. United States*, 8 Ct. of Cl. 449; *Hawkins v. Filkins*, 24 Ark. 286; *Harlan v. State*, 41 Miss. 566; *Berry v. Bellows*, 30 Ark. 198; *Shattuck v. Daniel*, 52 Miss. 834; *Cook v. Oliver*, 1 Woods, 437, Fed. Cas. No. 8164; *Hatch v. Burroughs*, id. 439, Fed. Cas. No. 6203; *Seymour v. Bailey*, 66 Ill. 288.

² *Williams v. Bruffy*, 96 U. S. 176, 24 L. Ed. 716; *Keith v. Clark*, 97 U. S. 454, 24 L. Ed. 1071; *Livingston v. Jordan*, Chase's Dec. 454; *Selden v. Preston*, 11 Bush, 191; *Pennywit v. Foote*, 27 Ohio St. 600, 22 Am. Rep. 340; *Dillard v. Alexander*, 9 Heisk. 719; *Rockhold v. Blevins*, 6 Baxt. 115; *Dow v. Johnson*, 100 U. S. 158, 25 L. Ed. 632; *Dorr v. Gibboney*, 3 Hughes, 332, Fed. Cas. No. 4006.

tration to the existence of organized society, were the same, with slight exception, whether the authorities of the state acknowledged allegiance to the true or the false federal power. They were the fundamental principles for which civil society is organized into government in all countries, and must be respected in their administration under whatever dominant authority they may be exercised. It is only when in the use of these powers substantial aid and comfort was given or intended to be given to the rebellion, when the functions necessarily reposed in the state for the maintenance of civil society were perverted to the manifest and intentional aid of treason against the government of the Union, that these acts are void.³

§ 22 (21). Federal and state statutes.—The sovereign power of making laws in the United States is divided and qualified; a part is vested in the federal congress, and a part in the several state legislatures. Congress has a legislative power only in respect to certain subjects enumerated in the federal constitution; the state legislatures have a general legislative power within the several states. They have not an unlimited power; for the power of each is diminished by the legislative power granted to congress, and it is also restricted by various provisions in the state constitutions.⁴

The acts of congress passed in the exercise of the enumerated powers are the supreme law of the land,—in the states, in the District of Columbia, in the territories throughout

³ *Sprott v. United States*, 20 Wall. 464, 22 L. Ed. 371; *Thorrington v. Smith*, 8 Wall. 1, 19 L. Ed. 361. The occupation of a place by a Confederate army and the installation of a temporary civil government under its military cover, suspended co-extensively with their potential range the government and the laws of the state, and not only compelled but legalized sub-

mission to the authority, however spurious, of the *de facto* power. *Baker v. Wright*, 1 Bush, 500; *Lay v. Succession of O'Neil*, 29 La. Ann. 722; *Railroad v. Hurst*, 11 Heisk. 625.

⁴ *Donnell v. State*, 48 Miss. 679, 12 Am. Rep. 375; *Thayer v. Hedges*, 22 Ind. 282; *Blair v. Ridgely*, 41 Mo. 63, 97 Am. Dec. 248; *Sears v. Cottrell*, 5 Mich. 251, 256.

the federal domain, or over such part as such acts are by their terms intended to operate. The state government cannot gainsay such laws, nor resist their authority. All individuals within the territory to which such laws are applicable are subject to their constraining and restraining effect. In the same sense, the state laws are supreme within the state on all the subjects to which they constitutionally relate. The federal government cannot gainsay such laws nor resist their authority.⁵

Both federal and state laws in their proper domain of subjects are supreme laws of the land; the former as concerning the interests of all the states or the Union, and the latter as concerning the local affairs and internal interests of the particular state. State laws must give way to valid acts of congress⁶ and to treaties made by the federal government.⁷ The construction given to a federal statute by the federal supreme court is binding upon the state courts,⁸ and will be followed out of comity even in a matter not cognizable in the federal courts.⁹ So the construction of a

⁵ *Ableman v. Booth*, 21 How. 506, 16 L. Ed. 169; *Cohens v. Virginia*, 6 Wheat. 264, 380-390, 5 L. Ed. 257; *Gibbons v. Ogden*, 9 Wheat. 1, 6 L. Ed. 23; *Tennessee v. Davis*, 100 U. S. 251, 25 L. Ed. 648; *Ex parte Siebold*, 100 U. S. 371, 25 L. Ed. 717; *Martin v. Hunter*, 1 Wheat. 304, 343, 4 L. Ed. 97; *Donnell v. State*, 48 Miss. 679, 12 Am. Rep. 375; *Coley*, Const. Lim. 7-27.

⁶ *Chan v. Brandt*, 45 Minn. 93, 47 N. W. 461.

⁷ *Blythe v. Hinckley*, 127 Cal. 431, 59 Pac. 787; *Adams v. Akerlund*, 168 Ill. 632, 48 N. E. 454; *Scharpf v. Schmidt*, 172 Ill. 255, 50 N. E. 182. State insolvent laws are displaced by the national bankruptcy act only to the extent that they are

inconsistent with it. *Old Town Bank v. McCormick*, 96 Md. 341; *R. H. Herron Co. v. Superior Court*, 136 Cal. 279, 68 Pac. 814.

⁸ *Haseltine v. Central National Bank*, 155 Mo. 66, 56 S. W. 895; *Board of Trustees v. Cuppett*, 52 Ohio St. 567, 40 N. E. 792; *First National Bank v. Chapman*, 9 Ohio C. C. 79; *Portland National Bank v. Scott*, 20 Ore. 421, 26 Pac. 276.

⁹ *York v. Conde*, 147 N. Y. 486, 42 N. E. 193, affirming 71 Hun, 614. But no principle of comity requires the courts of one state to follow the construction put upon an act of congress by the courts of another state. *Southern Ry. Co. v. Harrison*, 119 Ala. 539, 24 So. 552, 72 Am. St. Rep. 936, 48 L. R. A. 385.

state statute by the state supreme court will be followed by the federal courts.¹⁰

§ 23 (22). Both the federal and state laws belong to one system, and, though emanating from different legislative bodies, they are not hostile nor foreign to each other. In each state, the laws of congress applicable thereto operate of their own vigor. All persons must take notice of them, and are presumed to know them; all branches of the state government take notice of them; they are within the judicial knowledge of the state courts.

The laws of one state are foreign to other states, and are so regarded in their jurisprudence even as administered in the federal courts. But the laws of each state are laws operating within the territorial sovereignty of the Union, and therefore, as to the federal courts, they are not foreign laws. All the federal courts take judicial notice of the public statutes of the states. In *Owings v. Hull*,¹¹ a resort was had to the laws of Louisiana to determine the evidentiary value of a copy of a bill of sale on record in a notary's office. Mr. Justice Story, speaking for the court, said: "We are of opinion that the circuit court [sitting in the district of Maryland] was bound to take judicial notice of the laws of Louisiana. The circuit courts of the United States are created by congress, not for the purpose of administering the local law of a single state alone, but to administer the laws of all the states in the Union, in cases to which they respectively apply. The judicial power conferred on the general government by the constitution extends to many cases arising under the laws of the different states. And this court is called upon, in the exercise of its appellate

¹⁰ *Covington v. Kentucky*, 173 U. S. 231, 19 S. C. Rep. 883, 43 L. Ed. 679; *Knights Templars and Masons' Life Indemnity Co. v. Jarman*, 187 U. S. 197, 23 S. C. Rep. 108; *Iowa Life Ins. Co. v. Lewis*, 187 U. S. 835, 23 S. C. Rep. 126; *Manley v. Park*, 187 U. S. 547, 23 S. C. Rep. 208; *Schaeffer v. Werling*, 188 U. S. 516, 23 S. C. Rep. 449. In *People v. Linda Vista Irr. Dist.*, 128 Cal. 447, 61 Pac. 86, the court refused to follow a construction given to a California statute by the United States supreme court.

¹¹ 9 Pet. 624, 9 L. Ed. 246.

jurisdiction, constantly to take notice of and administer the jurisprudence of all the states. That jurisprudence is then, in no just sense, a foreign jurisprudence, to be proved in the courts of the United States, by the ordinary modes of proof by which the laws of a foreign country are to be established; but it is to be judicially taken notice of in the same manner as the laws of the United States are taken notice of by these courts.”¹²

§ 24 (23). **Territorial statutes.**—It is settled that congress has a plenary power of legislation over territory belonging to the United States, subject to the restrictions resulting from our republican system and the constitutional guaranties of personal rights.¹³ “All territory,” says Waite, C. J., speaking for the supreme court,¹⁴ “within the jurisdiction of the United States, not included in any state, must necessarily be governed by or under the authority of congress. The territories are but political subdivisions of the outlying dominion of the United States. They bear much the same relation to the general government that the counties do to the states, and congress may legislate for them as states do for their respective municipal organizations. The organic law of a territory takes the place of a constitution as the fundamental law of the local government. It is obligatory on and binds the territorial authorities; but con-

¹² *Pennington v. Gibson*, 16 How. 65, 80, 81, 14 L. Ed. 847; *Junction Ry. Co. v. Bank of Ashland*, 12 Wall. 226, 20 L. Ed. 385; *Cheever v. Wilson*, 9 Wall. 108, 19 L. Ed. 604; *Woodworth v. Spafford*, 2 McLean, 168, 175, Fed. Cas. No. 18,020; *Bennett v. Bennett*, Deady, 309, Fed. Cas. No. 1318; *Hathaway v. Mut. Life Ins. Co.*, 99 Fed. 534. In *Bennett v. Bennett*, the court said: “The national and state governments, although vested with distinct jurisdictions, are in no sense foreign to each other, but are sub-

ordinate and limited parts of one complete system of government. On principle, then, in the courts of the United States, the judgment of a state court ought to be regarded as a domestic judgment—a judgment given within the territorial sovereignty of the United States, and provable in the ordinary way by the certificate of the custodian of the original—the clerk of the court.”

¹³ Whart. Am. L., § 404.

¹⁴ *First National Bank v. Yankton*, 101 U. S. 129, 25 L. Ed. 1046.

gress is supreme, and, for the purposes of this department of its governmental authority, has all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the constitution. In the organic act of Dakota there was no express reservation of the power in congress to amend the acts of the territorial legislature; but none was necessary. Such a power is an incident of sovereignty, and continues until granted away. Congress may not only abrogate laws of the territorial legislatures, but it may itself legislate directly for the local government. It may make a void act of the territorial legislature valid, and a valid act void. In other words, it has full and complete legislative authority over the people of the territories, and all the departments of the territorial government. It may do for the territories what the people, under the constitution of the United States, may do for the states."¹⁵ A territorial act to be valid must conform to the constitution of the United States and to the grant of power from congress.¹⁶ It has also been held that a territorial act must be reasonable or it will be void, and the territorial legislature is likened in this respect to the legislative body of a municipality.¹⁷ Where a section of a

¹⁵ *Mormon Church v. United States*, 136 U. S. 1, 10 S. C. Rep. 792, 34 L. Ed. 478; *Cope v. Cope*, 137 U. S. 682, 11 S. C. Rep. 222, 34 L. Ed. 832; *Allen v. Reed*, 10 Okl. 105, 63 Pac. 867; *Goodson v. United States*, 7 Okl. 117, 54 Pac. 428; *Territory v. O'Connor*, 5 Dak. 397, 41 N. W. 746, 8 L. R. A. 855.

¹⁶ *Taylor v. Stevenson*, 2 Idaho, 180, 9 Pac. 642; *Stevenson v. Moody*, 2 Idaho, 260, 12 Pac. 902; *Territory v. Guyott*, 9 Mont. 46, 22 Pac. 134; *Farris v. Henderson*, 1 Okl. 384, 33 Pac. 380; *People v. Daniels*, 6 Utah, 288, 22 Pac. 159; *Territory v. Blomberg*, 2 Ariz. 204, 11 Pac. 671; *Ex*

parte Wilson, 114 U. S. 429, 5 S. C. Rep. 935, 29 L. Ed. 89.

¹⁷ *People v. Daniels*, 6 Utah, 288, 22 Pac. 159. The court says: "In the organic act, congress, under restrictions, express or implied, confers upon the territorial legislature authority to legislate with respect to such subjects as concern the people of the territory. When the authority with respect to the subject is specific, and its extent is clearly defined, the discretion of the legislature within constitutional limitations cannot be questioned; the denial of such discretion would be a denial of the power

territorial act is void, because not within its title, as required by the laws of congress, the approval of the act by congress cures the defect.¹⁸ After a territorial act has been approved by congress it cannot be repealed or amended by the territorial legislature.¹⁹

§ 25 (24). The existence of this authority in congress was from the early days of the republic a foregone conclusion. It does not rest in any acknowledged specific grant in the constitution, nor did it await a discovery of any other power from which by general agreement it was to be implied. In *American Insurance Co. v. Canter*,²⁰ Marshall, C. J., said: "Perhaps the power of governing a territory belonging to the United States which has not, by becoming a state, acquired the means of self-government, may result necessarily from the fact that it is not "within the jurisdiction of any particular state, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned." And in another part of the opinion he said: "In legislating for them [the territories] congress exercises the combined powers of the general and of a state government."²¹ In the late case

of congress; but when the power is given in general terms, and the extent to which it may be exercised upon the subject is not expressly limited and clearly defined in the organic act, then the territorial legislature must exercise its discretion. So far as that discretion is expressly limited by the constitution or the organic act such limitation must be observed; but when it is not, the legislature must follow the dictates of reason and justice. The law must be reasonable and just, because the court

will not presume that congress intended to authorize the legislature to make an unjust, an unreasonable, an unequal, or an oppressive law." pp. 292, 293.

¹⁸ *Karasek v. Peier*, 22 Wash. 419, 61 Pac. 83, 50 L. R. A. 845.

¹⁹ *Martin v. Territory*, 8 Okl. 41, 56 Pac. 712; *Murphy v. Utter*, 186 U. S. 95, 22 S. C. Rep. 776, 46 L. Ed. 1070.

²⁰ 1 Pet. 511, 541, 7 L. Ed. 242.

²¹ *Dred Scott v. Sandford*, 19 How. 445, 15 L. Ed. 691; *Benner v. Porter*, 9 How. 235, 242, 13 L. Ed. 119.

which has been referred to,²² the chief justice, delivering the opinion of the court, recognizes the same uncertainty of derivation, and repeats the announcement absolutely that the existence of the power is conceded.²³

²² *First Nat. Bank v. Yankton*, 101 U. S. 129, 25 L. Ed. 1046.

²³ In *Dred Scott v. Sandford*, 19 How. 393, 15 L. Ed. 691, the learning on this point was exhausted. In the opinion of the court, delivered by Taney, C. J., it is said: "The counsel for the plaintiff has laid much stress upon that article in the constitution which confers on congress the power 'to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;' but, in the judgment of the court, that provision has no bearing on the present controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged to or was claimed by the United States, and was within their boundaries as settled by the treaty with Great Britain; and can have no influence upon a territory afterwards acquired from a foreign government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more."

In another part of the opinion the authority of congress over territory subsequently acquired was thus discussed:

"And indeed the power exercised by congress to acquire territory and establish a government there, according to its own unlimited dis-

cretion, was viewed with great jealousy by the leading statesmen of the day. And in the *Federalist* (No. 38), written by Mr. Madison, he speaks of the acquisition of the Northwestern Territory by the confederated states, by the cession from Virginia, and the establishment of a government there, as an exercise of power not warranted by the articles of confederation, and dangerous to the liberties of the people. And he urges the adoption of the constitution as a security and safeguard against such an exercise of power.

"We do not mean, however, to question the power of congress in this respect. The power to expand the territory of the United States by the admission of new states is plainly given; and in the construction of this power by all the departments of the government, it has been held to authorize an acquisition of territory, not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission. It is acquired to become a state, and not to be held as a colony and governed by congress with absolute authority; and, as the propriety of admitting a new state is committed to the sound discretion of congress, the power to acquire territory for that purpose, to be held by the United States until it is in a suitable condition to become a state

§ 26 (25). Territories have but temporary governments.— Are in tutelage to become states.— The federal constitution provides for the admission of new states.²⁴ The provision is general and has been applied not only to the admission of new states in territory belonging to the government when the constitution was adopted, but to new states formed in newly acquired territory. It has been decided to be contrary to the constitution to acquire territory with any other view than to the formation and admission of new states.²⁵

“The very fact,” says Mr. Wharton, “that territories are infant states, to be admitted into the Union on maturity,

upon an equal footing with the other states, must rest upon the same discretion.”

²⁴ Sec. 3, art. 4.

²⁵ In the majority opinion in *Dred Scott v. Sanford*, already cited, the chief justice said: “There is certainly no power given by the constitution to the federal government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way, except by the admission of new states. That power is plainly given; and if a new state is admitted, it needs no further legislation by congress, because the constitution itself defines the relative rights and powers and duties of the state, and the citizens of the state and the federal government. But no power is given to acquire a territory to be held and governed permanently in that character.” He amplifies thus on another page: “The principle upon which our governments rest, and upon which alone they continue to exist, is the

union of states, sovereign and independent, within their own limits in their internal and domestic concerns, and bound together as one people by a general government possessing certain enumerated and restricted powers, delegated to it by the people of the several states, and exercising supreme authority within the scope of the powers granted to it, throughout the dominion of the United States. A power, therefore, in the general government to obtain and hold colonies and dependent territories over which they might legislate without restriction, would be inconsistent with its own existence in its present form. Whatever it acquires it acquires for the benefit of the people of the several states who created it. It is their trustee acting for them, and charged with the duty of promoting the interests of the whole people of the Union in the exercise of the powers specifically granted.” See historical notes in opinion of Mr. Justice Campbell in same case, pp. 507–508. Whart. Am. L., §§ 462, 464.

shows that they are to be governed on the same general principles, as far as is applicable, as are states, just as infants, *mutatis mutandis*, are governed on the same general principles, so far as concerns safeguards, as are adults.”²⁶ Only a political change is produced by admission into the Union as a state. Congress then ceases to legislate for its people, or in regard to their internal and domestic concerns. They have thus been admitted to the exercise of the right of self-government. The territorial laws enacted by congress or the local legislature continue in force so far as they are consistent with the new condition of statehood and the provisions of the state constitution.²⁷

²⁶ Id., § 464.

ritory v. Lee, 2 Mont. 124; Am.

²⁷ Ante, § 19. See Benner v. Porter, 9 How, 234, 18 L. Ed. 119; Ter-
Ins. Co. v. Canter, 1 Pet. 511, 7 L. Ed. 242.

CHAPTER II.

THE ENACTMENT OF LAWS AND HOW THEIR EXISTENCE IS ESTABLISHED.

§ 27 (26). **The legislature.**—It is a primary requisite to the enactment of laws that there be a legal legislature. In time and place the members entitled so to do must lawfully convene.¹ A legislature elected under a void apportionment act is a *de facto* legislature and its acts are valid.² When a majority of the members of the house meet and organize at the regular place of meeting, they constitute the legal house, though the governor and senate recognize the minority who have also organized at another place.³ The senate of New Jersey consists of twenty-one members and seven are elected each year. It has been held that it is not a continuous body, but must be organized anew each year, and that, where nine old members and one new organized one body and four old members and seven new organized another, the latter, being organized by a majority, was the legal senate.⁴ But where the question is whether a statute was legally passed, the courts will not go back of the journals to inquire whether the legislature was legally constituted.⁵

The American legislature, acting under written constitu-

¹Tennant's Case, 3 Neb. 409; State v. Judge, 29 La. Ann. 223; Macon, etc. R. R. Co. v. Little, 45 Ga. 370; Gormley v. Taylor, 44 Ga. 76. See Rohrbacker v. Jackson, 51 Miss. 735; People v. Hatch, 33 Ill. 9, 151.

²State v. Cunningham, 81 Wis. 440, 51 N. W. 724, 15 L. R. A. 561.

³In re Gunn, 50 Kan. 155, 32 Pac. 470, 948, 19 L. R. A. 519.

⁴State v. Rogers, 56 N. J. L. 480, 28 Atl. 726.

⁵Auditor-General v. Supervisors, 89 Mich. 552, 51 N. W. 483; State v. Smith, 44 Ohio St. 848, 7 N. E. 447. In both these cases an act was assailed on the ground that it never received the vote of a majority of the senate. It was set up that a minority of the senate met in the

tions, can only exercise a delegated power. It must keep within the limits of power granted to it and observe the directions as to membership, the time of meeting and length of its sessions, procedure in its deliberations, the number of votes necessary for any purpose, and the making of its records.

§ 28 (27). **How existence of statute established — English rule.**—The British parliament, including the three great estates of the realm — the king, lords and commons,— possesses a transcendent power. It enacts laws by a procedure devised by itself, and it is subject to no paramount law. When a statute is framed and recorded according to its traditional forms as an act of parliament, it is a record which expresses the will of the sovereign power. General acts are “enrolled by the clerk of the parliament, and delivered over into the chancery, which enrollment in the chancery makes them the original record.” Private acts filed, sealed, and remaining with the clerk of parliament, are also original records.⁶ The record is deemed a high

absence of the majority, voted to unseat certain of the majority and to seat others in their places, who, joining with the minority, passed the act. But the court refused to consider these facts, and in the latter case it is said: “As to the averment that the passage of the act was part of a conspiracy, entered into between the president of the senate and seventeen members, carried into effect in the absence from the state of a majority of the members of the senate, it is sufficient to say that such suggestions have frequently been made for the purpose of inducing judicial inquiry into the conduct of legislative bodies, but the inquiry has as frequently been declined by the courts as not only indecorous, but as sub-

versive of the independence of the legislature as a co-ordinate branch of the government. There is no authority for it in the constitution and laws of this state, and it is opposed to the practice and polity of our system of government.” p. 366. And see *People v. Mahaney*, 13 Mich. 481; *Lyons v. Woods*, 153 U. S. 649, 14 S. C. Rep. 959, 38 L. Ed. 854.

⁶*King v. Arundel*, Hob. 110; 5 Comyn's Dig. Parliament; 1 Phil. Evi. 816. Anciently, the manner of proceeding in parliament was much different from what it is at the present day; for, formerly, the bill was in the form of a petition, and these petitions were entered upon the lords-rolls, and upon these rolls the royal assent was likewise

record. It imports absolute verity, and must be tried by itself, *teste meipso*. This is the dignity and quality of all technical records. No plea can raise any other question regarding a record than that of its existence. Upon that issue the record itself is the only evidence; the trial is merely by the record. A record or enrollment is a monument of so high a nature, and imports in itself such absolute verity, that if it be pleaded that there is no such record there is no trial by witnesses, jury or otherwise than by the court inspecting the record itself.⁷ The court being bound to take judicial notice of the laws, no plea can be necessary or permitted denying the existence of the record of an act of par-

entered; and upon this, as a groundwork, the judges used, at the end of the parliament, to draw up the act of parliament into the form of the statute which was afterwards entered upon the rolls, called the *statute-rolls*; which were different from those called the lords-rolls, or the rolls of parliament; upon these statute-rolls neither the bill nor petition from the commons, nor the answer of the lords, nor the royal assent, were entered, but only the statute, as it was drawn up and penned by the judges; and this was the method till about Henry the Fifth's time. In his time, it was desired that the acts of parliament might be drawn up and penned by the judges before the end of parliament; and this was by reason of a complaint then made, that the statutes were not equally and fairly drawn up and worded. After the parliament was dissolved or prorogued in Henry the Sixth's time, the former method was altered, and these bills *con-*
tenentes formam actus parliamenti

were first used to be brought into the house. The bills (before they were brought into the house) were ready drawn, in the form of an act of parliament, and not in the form of a petition, as before; upon which bill it was written by the commons, *soite baile al seigneurs*; and by the lords, *soit bayle al roye*; and by the king, *le roy le veut*; all this was written upon the bill, and the bill, thus indorsed, was to remain with the clerk of the parliament, and he was to enter the bill thus drawn at first, in the form of an act of parliament or statute, upon the statute-rolls, without entering the answer of the king, lords or commons upon the statute-rolls, and then issued out writs to the sheriffs, with transcript of the statute-rolls, viz.: of the bill drawn at first in the form of a statute and without the answer of the king, lords and commons, to the bill, to proclaim the statute. Bac. Abr., title Court of Parliament, F.

⁷ 2 Black. Com. 881.

liament. In Prince's Case,⁸ it was resolved "that against a general act of parliament, or such act whereof the judges *ex officio* ought to take notice, the other party cannot plead *nul tiel record*; for of such acts the judges ought to take notice; but if it be misrecited the party ought to demur in law upon it. And, in that case, the law is grounded upon great reason; for God forbid, if the record of such acts should be lost or consumed by fire or other means, that it should tend to the general prejudice of the commonwealth; but rather, although it be lost or consumed, the judges, either by the printed copy, or by the record in which it was pleaded, or by other means, may inform themselves of it."⁹

§ 29 (28). Legislative records.—The conclusiveness of records is a conclusion of the common law. We have in America the common law so far as it is suited to our condition. A technical record here has the same effect as by the common law of England, except as it is modified by the written law, or conditions are so changed as to render the common law inapplicable. The conditions in respect to legislation in this country, where a mandatory procedure is prescribed in a constitution, are not the same as in England.¹⁰

⁸ 8 Coke, 28.

⁹ Dwarris on St. 613; *Sherman v. Story*, 30 Cal. 276, 89 Am. Dec. 93; *Eld v. Gorham*, 20 Conn. 8.

¹⁰ The dissenting opinion of Smith, C. J., in *Green v. Weller*, 32 Miss. 704, is instructive on this point. He says: "In Great Britain there is no written fundamental law defining and limiting the powers of the government, by which the validity of the acts of any of the departments may be tested. The parliament, in a political and legislative sense, is omnipotent and supreme. The power and jurisdiction of parliament, says Lord Coke,

are so transcendent and absolute that it cannot be confined, either for causes or persons, within any bounds. 4 Inst. 36. 'And so long,' adds Sir William Blackstone, 'as the British constitution lasts, it may be safely affirmed that the power of parliament is absolute and uncontrolled.' 2 Com. 162.

"A void act of legislation necessarily implies the existence of a superior and controlling power in the state. There are but two conceivable reasons for which an act can be void. First, for want of power in the legislature to pass it. Second, because it has not been

§ 30 (29). A legislature in our republican system of government is a representative body. Its power is delegated by a charter from the people—a constitution. This is a

passed in the method required to make it valid. And the universally received doctrine in England is, that an act of parliament of which the terms are explicit, and the meaning plain, cannot be questioned or its authority controlled in any court whatever. The idea, therefore, of an unconstitutional law of parliament can have no existence under the English system of government. The parliament rolls, which are transcripts of the acts, made up under the supervision of officers appointed by parliament, and declared by law to be records, necessarily, I may say naturally, are conclusive evidence of the existence of the statute, and imply the due performance of the necessary prerequisites in their enactment. It is a rule which flows from the absolute and unlimited jurisdiction and power of parliament.

“The principles of the common law, unsuited to our conditions, or repugnant to the spirit of our government, have no existence within this commonwealth. It required no act of positive legislation to repeal them. They have been excluded by the silent operation of our institutions. It is clear, therefore, that this rule, as a principle of the common law, can have no operation within this state.

“For under the American theory of government the *jus summi imperii*, the supreme, absolute, uncontrolled authority does not reside

in any of the departments of the government, nor in all of them united. It is inherent in the people, from whom all power is derived, and upon whose consent all government is founded. The constitution derives its existence from the immediate act and consent of the people. It is a law to the government which derives its just powers therefrom, or from the assent of the governed, for whose benefit that power is intrusted. As the constitution is the supreme law, all the acts of the government or the departments thereof, done in contravention of its provisions, are inoperative and void. An act of the legislature which has not been passed in conformity with the directions of the constitution, is equally void with one whose terms violate its provisions. Bill of Rights, art. 3.

“The judiciary, like all the departments, are bound by the constitution, and sworn to support it. It is, therefore, their duty to pronounce an act of the legislature null, and to refuse to give it effect, if it be void for either of these causes.”

In *Sherman v. Story*, 30 Cal. 253, 89 Am. Dec. 93, is a lucid and thorough exposition of the common law on this subject, and it seems to have been properly applied to the case under consideration, for there was no departure from a constitutional practice complained of.

sacred instrument, and upon it as a foundation is reared the whole fabric of our civil government. It confers all the powers deemed necessary to that government; in its limitations is all the security of the people against usurpation. Therefore, it is one of the beneficent axioms of our constitutional jurisprudence that the people are the source of all the power possessed and exercised by the organized state; its restrictions are of the nature of prohibitions and mandatory. The authority which confers the power to make laws has the acknowledged right to qualify the grant and peremptorily regulate the exercise of the power conferred, so that acts of legislation to be valid must not only be within the grant and not exceeding the restrictions imposed, but also be passed or adopted in the mode or by the procedure prescribed.¹¹

§ 31 (30). **Constitutional provisions prescribing parliamentary procedure.**—The federal constitution and that of nearly every state in the Union contain directions in respect to the manner of enacting as well as of authenticating statutes. These directions vary in terms and to a considerable extent in substance. As to some very important particulars compliance will not appear upon the face of the statute. The procedure thus regulated and directed includes the meeting of the two houses, their action respectively in the introduction, amendment and passage of bills, communications between the houses, the time of presenting bills to the governor for approval, and of his action thereon. In part their procedure is historically entered, and in some particulars required to be entered in the legislative journals; in part it so occurs that material points will not be or are not required to be mentioned in any record or official memorial; as, for instance, when a bill is presented to the governor, or when he approves it. Legislative journals were in

¹¹ *Legg v. Mayor, etc.*, 42 Md. 203; *id.* 546; *Moody v. State*, 48 *id.* 115, *Moog v. Randolph*, 77 Ala. 597; 17 Am. Rep. 28; *Supervisors v. Hee-Jones v. Hutchinson*, 48 *id.* 721; *nan*, 2 Minn. 380. *Perry County v. Railroad Co.*, 58

use in the British parliament at the time our legislative practice under constitutions commenced, and had been for centuries. If the process of enacting laws is not regulated by constitution; or, if so regulated, the provisions on that subject are deemed addressed solely to the law-making department, the journals hold the same place in our polity and jurisprudence as is assigned to them by the common law. They cannot be appealed to to impeach the regular record of a statutory enactment. That record whatever it may be imports absolute verity; imports the regular enactment of the statute by the proper forms of legislation; it speaks in its own words the sovereign will. Found in the proper custody it proves and identifies itself; it is a record not to be contradicted by the legislative journals, nor by any other evidence.¹²

§ 32 (31). **Courts holding enrolled act conclusive — Missouri.**— If the enrollment or original record of a statute is regular on its face; that is, if the act is framed with no infirmity on its face, is duly promulgated,¹³ or properly authenticated and deposited in the proper office, it is conclusively presumed to have been regularly enacted; the record is invulnerable to collateral attack and proves itself. This is the rule in several states having constitutions regulating the legislative procedure and requiring legislative journals to be kept. A leading case on this subject is *Pacific Railroad v. The Governor*.¹⁴

The act under discussion had been vetoed by the governor, and the question was whether it had been subsequently passed by the proceedings required by the constitution.¹⁵

¹² *Sherman v. Story*, 30 Cal. 253, 89 Am. Dec. 93; *People v. Burt*, 43 Cal. 560; *Railroad Tax Cases*, 13 Fed. 722. See *ante*, § 29; *post*, § 57.

¹³ *State Lottery Co. v. Richoux*, 23 La. Ann. 743, 8 Am. Rep. 602; *Whited v. Lewis*, 25 La. Ann. 568.

¹⁴ 23 Mo. 353, 66 Am. Dec. 673.

¹⁵ The case arose under the constitution of 1820, which contained these provisions: “. . . They [the houses] shall each, from time to time, publish a journal of their proceedings, except such parts as may, in their opinion, require secrecy; and the yeas and nays on

Scott, J., delivering the opinion of the court, used this language: "Whilst the power of the courts to declare a law unconstitutional is admitted on all hands as being necessary to preserve the constitution from violation, yet such power is claimed and exercised in relation to laws which show on their face that the constitutional limit has been transcended. The reason of this principle limits the claim of jurisdiction to such cases. The constitution is designed to limit the powers of the government, and to confine each of the departments to its appropriate sphere. If the legislature exceed its powers in the enactment of a law, the courts being sworn to support the constitution must judge that law by the standard of the constitution and declare its [in]validity. But the question whether a law on its face violates the constitution is very different from that growing out of the non-compliance with the forms required to be observed in its enactment. In the one case a power is exercised, not delegated, or which is prohibited, and the question of the validity of the law is deter-

any question shall be entered on the journal, at the desire of any two members." Art. 3, sec. 18.

Sec. 21. "Bills may originate in either house, and may be altered, amended or rejected by the other; and every bill shall be read on three different days in each house, unless two-thirds of the house where the same is depending shall dispense with this rule; and every bill, having passed both houses, shall be signed by the speaker of the house of representatives and by the president of the senate."

Art. 4, sec. 10. "Every bill which shall have been passed by both houses of the general assembly, shall, before it becomes a law, be presented to the governor for his approval. If he approve, he shall sign it; if not, he shall return it,

with his objections, to the house in which it shall have originated, and the house shall cause the objections to be entered at large on its journal, and shall proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the same, it shall be sent together with the objections to the other house, by which it shall be in like manner reconsidered, and if approved by a majority of all the members elected to that house, it shall become a law. In all such cases the votes of both houses shall be taken by yeas and nays; the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. . . ."

mined from the language of it. In the other, the law is not, in its terms, contrary to the constitution; on its face it is regular, but resort is had to something behind the law itself in order to ascertain whether the general assembly, in making the law, was governed by the rules prescribed for its action by the constitution. This would seem like an inquisition into the conduct of the members of the general assembly, and it must be seen at once that it is a very delicate power, the frequent exercise of which must lead to endless confusion in the administration of the law."

§ 33 (32). Further on in the opinion the learned judge said: "The sense of the words in which the forms to be observed in legislation are prescribed may be matter of doubt. Different opinions may be entertained as to the meaning of the language in which they are expressed, as well as to the end or object of them. This very case furnishes an illustration of the truth of this remark. The members of the general assembly may conscientiously believe that they have pursued the constitutional course."¹⁶

¹⁶In *State v. Mead*, 71 Mo. 266, the conditions here deprecated were fully adopted as a result of subsequent changes in the constitution. The act in question was passed under a constitution containing the following provision:

"No bill shall become a law until the same shall have been signed by the presiding officers of each of the two houses in open session. And before such officer shall affix his signature to any bill he shall suspend all other business, declare that such bill will now be read, and that if no objection be made he will sign the same, to the end that it shall become a law. The bill shall then be read at length, and if no objection be made he shall in the presence of the house, in open session, and before any other busi-

ness is entertained, affix his signature, which fact shall be noted on the journal and the bill immediately be sent to the other house. When it reaches the other house the presiding officer thereof shall immediately suspend all other business, announce the reception of the bill, and the same proceedings shall thereupon be observed in every respect as in the house in which it was first signed. If in either house any member shall object that any substitution, omission or insertion has occurred, so that the bill proposed to be signed is not the same in substance and form as when considered and passed by the house, or that any particular clause of this article of the constitution has been violated in its passage, such objections shall

But to give the executive and judicial departments a right to revise this exercise of their judgment, would it not be subjecting the legislature to a surveillance which, instead of making it a co-ordinate department, would subject it to a dependence on the others? There is a fitness in making each department the sole judge of the rules prescribed for its conduct; this is necessary to render them co-ordinate, and not dependent on each other. . . . We do not maintain that the legislature can prevent a scrutiny into its acts, which the constitution designed should be made, by any mode of authentication it may adopt. We have endeavored to show that the constitution never contemplated that objections of the character urged against the law whose validity is now under consideration should be raised against a bill passed with the approval of the governor. There is no reason why objections of like character should be raised against a bill passed against his will. . . . Upon the whole, we are of the opinion that the objections taken against the mode of passing this law by the general assembly on its reconsideration are untenable, and the constitution and law preclude an inquiry as to the existence of such objections; the constitution regarding the provisions alleged to have been violated in the passage of this law as merely directory, and, being so, a departure from them, even if there was a departure, would not render the law void."

A later constitutional provision requiring that, on the final passage of a bill, the vote shall be taken by yeas and

be passed upon by the house, and, if sustained, the presiding officer shall withhold his signature, but if such objection shall not be sustained, then any five members may embody the same over their signatures, in a written protest, under oath, against the signing of the bill. Said protest, when offered in the house, shall be noted upon the journal, and the original shall be annexed to the bill to be consid-

ered by the governor in connection therewith."

The first clause was held mandatory, but the others directory, except that in case of protest they were submitted with the bill to the governor, and to be considered by him,—that this was the remedy provided by the constitution for any supposed infraction of those clauses.

nays and entered on the journal, and that a majority of the members of each house must be recorded as voting in favor of the bill, is held to be mandatory.¹⁷

§ 34 (33). Same — Louisiana.— All the constitutions of Louisiana have required each house of the general assembly to keep and publish weekly a journal of its proceedings, and to enter therein the yeas and nays of the members on any question at the desire of any two of them. And also has provided that “No bill shall have the force of a law until on three several days it be read in each house of the general assembly, and free discussion be allowed thereon, unless, in case of urgency, four-fifths of the house where the bill shall be depending deem it expedient to dispense with this rule.” In *State Lottery Co. v. Richoux*,¹⁸ it was said by the court: “When a legislative act is duly promulgated according to the constitution and laws under which it is passed, we find no authority in the judiciary department to look behind it and determine its validity or invalidity from the proceedings of the general assembly in adopting it. Such a course, it would seem, is not sustainable on the theory of the independent and separate action of the three branches of the state government. Where a legislative act is attacked on the ground that it contains provisions that are unconstitutional, the question of its validity is properly within the scope of judicial action. The courts have power, when a constitutional question is raised, to examine whether the thing ordered, permitted or forbidden to be done may have effect under the sanction of the constitution. The question should be, is the law itself constitutional as to its provisions and what it declares, and not whether it is constitutional as to the manner of its enactment or the proceedings by which it was enacted.” But later cases sustain the view that the enrolled bill may be impeached by the journals.¹⁹

¹⁷ *State v. Mason*, 155 Mo. 486, 55 S. W. 636. See *Whited v. Lewis*, 25 La. Ann. 568. And see *State v. Wray*, 109 Mo. 594, 19 S. W. 86; *State v. Field*, 119 Mo. 593, 24 S. W. 752.

¹⁸ 23 La. Ann. 743, 8 Am. Rep. 602. ¹⁹ *State v. Laiche*, 105 La. 84, 29 So. 700; *State v. Secretary of State*, 43 La. Ann. 590, 9 So. 776; *Hollings-*

§ 35 (34). Same — Mississippi.— In Mississippi the same subject was thus discussed in *Green v. Weller*:²⁰ "It may be that legislative acts may be passed without a compliance with the requirements of the constitution. If such defect or violation appear on the face of the act, or by that which constitutes the record, which can be judicially noticed, the power of the court to determine the question is indisputable. But if the proper record shows that the act has received the sanctions required by the constitution as evidence of its having been passed agreeably to the constitution, and its provisions be not repugnant to the constitution, the regularity and stability of government and the peace of society require that it should have the force of a valid law."²¹

§ 36 (35). Same — Other states.— The constitution of Nevada requires particular proceedings in the passage of a legislative act. Each house must keep a journal of its own proceedings which shall be published; that "every bill shall

worth v. Thompson, 45 La. Ann. 222, 12 So. 1, 40 Am. St. Rep. 220.

²⁰ 32 Miss. 690.

²¹ Const. 1868, art. 4, secs. 14, 23. See *Swann v. Buck*, 40 Miss. 268. A contrary view was announced in *Brady v. West*, 50 Miss. 68, but the latter case was expressly overruled in *Ex parte Wren*, 63 Miss. 512, 538, 56 Am. Rep. 825, in which the court says: "The fundamental error of any view which permits an appeal to the journal to see if the constitution has been observed in the passage by both houses of their enactments, is the assumed right of the judicial department to revise and supervise the legislature as to the manner of its performance of its appointed constitutional functions. It is the admitted province of the courts to judge and declare if an act of the legislature violates the constitution; but this duty of

the courts begins with the completed act of the legislature. It does not ante-date it. The legislature is one of the three co-ordinate and co-equal departments into which the powers of government are divided by the constitution, possessing all legislative power and not subject to supervision and control during its performance of its constitutional functions, nor to judicial revision afterward of the manner in which it obeyed the constitution its members are sworn to support. From necessity the judicial department must judge of the conformity of legislative acts to the constitution, but what are legislative acts must be determined by what are authenticated as such according to the constitution." pp. 533, 534. The earlier doctrine was again confirmed in *Hunt v. Wright*, 70 Miss. 298, 11 So. 608.

be read by sections on three several days in each house, unless in case of emergency two-thirds of the house where such bill may be pending shall deem it expedient to dispense with this rule; but the reading of a bill by sections on its final passage shall in no case be dispensed with, and the vote on the final passage of any bill or joint resolution shall be taken by yeas and nays to be entered on the journals of each house; and a majority of all the members elected to each house shall be necessary to pass every bill or joint resolution; and all bills or joint resolutions so passed shall be signed by the presiding officers of the respective houses, and by the secretary of the senate and clerk of the assembly."²² It is there held that the court, for the purpose of informing itself of the existence and terms of a law, cannot look beyond the enrolled act certified by these officers who are charged by the constitution with the duty of certifying and with the duty of deciding what laws have been enacted.²³ Like rulings have been made under similar constitutional provisions in Pennsylvania,²⁴ Iowa,²⁵ New Jersey,²⁶ Cali-

²² Art. 4, sec. 18.

²³ *State v. Swift*, 10 Nev. 176, 21 Am. Rep. 721; *State v. Glenn*, 18 Nev. 39, 1 Pac. 186; *State v. Beck*, 25 Nev. 68, 56 Pac. 1008.

²⁴ Const. 1873, art. 3, sec. 4; art. 2, sec. 12; *Commonwealth v. Martin*, 107 Pa. St. 185; *Kilgore v. Magee*, 85 id. 412.

²⁵ Const. 1846, art. 8, secs. 9, 11; Const. 1857, art. 3, secs. 9, 17; *Clare v. State*, 5 Iowa, 510; *Duncombe v. Prindle*, 12 id. 1.

²⁶ Const. 1876, art. 4, sec. 4. In the leading case in that state on this subject (*Pangborn v. Young*, 32 N. J. L. 29), the court by Beasley, C. J., said: "From the earliest times, so far as I am able to ascertain, it has been the invariable course of legislative practice in this state, for the speaker of each house to

sign the bill as finally engrossed and passed. It is likewise certified by indorsement by the clerk of the house in which it originated. With these attestations of authenticity upon it, it is then filed in the office of the secretary of state. This has been the course of proceeding from certainly a very remote period to the present time; under our present constitution the written approval of the governor is requisite. There seems, therefore, to be no doubt whatever that these copies, thus authenticated and filed, are to be regarded as enrolled bills, corresponding in their general character, and partaking, if not in all, at least in most respects, of the nature of parliamentary rolls. In the statute book they are frequently referred to as enrolled bills; and if

for²⁷nia,²⁷ Maine,²⁸ North Dakota,²⁹ North Carolina,³⁰ South Dakota,³¹ and New York since the adoption of the constitution of 1846.³²

we go back to provincial times we find indorsed upon these copies, with the executive approval, a direction to enroll them, which meant nothing more than to file them. These are the characteristics and nature of the copies of legislative bills deposited according to the ordinary routine in the office of the secretary of state. . . . The principal argument in favor of this judicial appeal from the en-

rolled law to the legislative journal, and which was much pressed in the discussion at the bar, was, that the existence of this power was necessary to keep the legislature from overstepping the bounds of the constitution. The course of reasoning urged was that if the court cannot look at the facts and examine the legislative action, that department of the government can, at will, set at defiance, in the

²⁷ *Yolo County v. Colgan*, 132 Cal. 265, 64 Pac. 403, 84 Am. St. Rep. 41, in which prior cases are reviewed. See *Fowler v. Pierce*, 2 Cal. 165; *Weill v. Kenfield*, 54 Cal. 111.

²⁸ *Weeks v. Smith*, 81 Me. 538, 18 Atl. 293. The court says: "But when the original act, duly certified by the presiding officer of each house to have been properly passed, and approved by the governor, showing upon its face no irregularities or violation of constitutional methods, is found deposited in the secretary's office, is the highest evidence of the legislative will, and must be considered as absolute verity, and cannot be impeached by any irregularity touching its passage shown by the journal of either house. Legislative journals are made amid the confusion of a dispatch of business, and are therefore much more likely to contain errors than the certificates of the presiding officers are to be untrue. Moreover, public policy requires that the enrolled statutes of our state, fair upon their faces, should not be put in question,

after the public have given faith to their validity. No man should be required to hunt through the journals of a legislature to determine whether a statute, properly certified by the speaker of the house and president of the senate and approved by the governor, is a statute or not." p. 547.

²⁹ *Territory v. O'Connor*, 5 N. D. 397, 41 N. W. 746.

³⁰ *Carr v. Coke*, 116 N. C. 223, 22 S. E. 16, 47 Am. St. Rep. 801, 28 L. R. A. 737. But this is modified by later decisions to the extent that what the constitution expressly requires to be entered in the journals must be so entered or the act will be invalid. *Smathers v. Commissioners*, 125 N. C. 480, 34 S. E. 554; *Union Bank v. Commissioners*, 119 N. C. 214, 25 S. E. 916, 34 L. R. A. 487. And see *post*, § 53.

³¹ *Narregang v. Brown County*, 14 S. D. 357, 85 N. W. 602; *State v. Bacon*, 14 S. D. 394, 85 N. W. 605.

³² Art. 8, secs. 11, 15; *People v. Supervisors*, 8 N. Y. 317, 327, 328.

§ 37 (36). **Same—New York.**— Though the constitution of New York provides that the votes required on the passage of bills shall be taken by yeas and nays and entered on the journals, it is nevertheless held that a certificate made

enactment of statutes, the restraints of the organic law. This argument, however specious, is not solid." The answer of the court, briefly stated, was that if the legislature intends a violation of the constitution in the enactment of a statute it is futile to rely on its journals or any extrinsic evidence to show the irregularity. The journals are under its direction, and not kept or authenticated in a manner to weigh as evidence against enrolled acts. "In my estimation," said the chief justice, "the doctrine in question if entertained would, as against legislative encroachments, be useless as a guard to the constitution, and it certainly would be attended with many evils. Its practical application would be full of embarrassment. If the courts, in order to test the validity of a statute, are to draw the comparison between the enrolled copy of an act and the entries on the legislative journal, how great, to have the effect of exploding the act, must be the discrepancy between the two? Will the omission of any provision, no matter how unimportant, have that effect? The difficulty of a satisfactory answer to these and similar interrogatories is too apparent to need comment. And, again, to notice one among the many practical difficulties which suggest themselves, what is to be the extent of the application of this doctrine? If an enrolled

statute of this state does not carry within itself conclusive evidence of its own authenticity, it would seem that the same principle must be extended to the statutes, however authenticated, of other states." The court also mentions that in the frame of the state government there are three co-ordinate branches, in all things equal and independent, each in its sphere the trusted agent of the public; and it is arrogating an authority, not given to the judiciary, to inquire into the veracity of the certificate by which the legislature by its officers authenticates its enactments. In the opinion of the court, the power to certify to the public laws itself has enacted is one of the trusts of the constitution to the legislature of the state. The decision in *Pangborn v. Young*, 32 N. J. L. 29, has been approved and followed in later cases. *Standard Underground Cable Co. v. Attorney-General*, 46 N. J. Eq. 270, 19 Atl. 733, 19 Am. St. Rep. 394 (Court of Errors and Appeals); *Mason v. Cranbury*, 68 N. J. L. 149. But it is held that the enrolled act, in case of a private, special or local bill, is not conclusive that notice of the intention to apply therefor was given as required by the constitution. *State v. Trenton*, 57 N. J. L. 818, 31 Atl. 228; *Attorney-General v. Tuckerton*, 67 N. J. L. 120, 50 Atl. 602.

pursuant to a statute by the secretary of state on acts being deposited in his office, certifying the day, month and year when the same became a law, excludes all resort to any other evidence of its passage, and makes the act so deposited and certified the original record of it, invulnerable under the common-law rules applicable to enrolled acts of parliament. The statute³³ provides that such certificate shall be conclusive evidence of the facts therein declared.³⁴

§ 38 (37). **Same — Indiana.**— The Indiana constitution of 1851 required each house to keep a journal of its proceedings and publish the same.³⁵ It also provides that “every bill shall be read by sections, on three several days in each house, unless, in case of emergency, two-thirds of the house where such bill may be depending shall, by a vote of yeas and nays, deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall in no case be dispensed with; and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays.”³⁶ By another section it is declared that “a majority of all the members elected to each house shall be necessary to pass every bill or joint resolution; and all bills and joint resolutions so passed shall be signed by the presiding officers of the respective houses.”³⁷ A like vote after a veto will adopt the bill, and give it the force of law; but no similar certificate of the presiding officers in that case is provided for.³⁸ If the governor fail for three days, Sundays excepted, to act upon a bill after it is presented to him, it becomes a law without his signature, unless a general adjournment prevents its return, and he does not, within five days after the adjournment, file his objections thereto in the office of the secretary of state. No verifica-

³³ 1 R. S., p. 187, §§ 10, 11.

³⁴ See *People v. Devlin*, 33 N. Y. 269, 283, 88 Am. Dec. 377; *People v. Commissioners*, 54 N. Y. 276, 13 Am. Rep. 581; *Purdy v. People*, 4 Hill, 384; *People v. Purdy*, 2 id. 31; *De Bow v. People*, 1 Denio, 14; *Warner v. Beers*, 23 Wend. 125;

Thomas v. Dakin, 22 id. 9; *Rumsey v. New York, etc. R. R. Co.*, 180 N. Y. 88, 28 N. E. 763.

³⁵ Art. 4, sec. 12.

³⁶ Art. 4, sec. 18.

³⁷ Art. 4, sec. 25.

³⁸ See art. 5, sec. 14.

tion of these facts appears to be provided for in the constitution preliminary to the deposit of the act with the secretary of state. The constitution also prohibits the presentation to the governor of any bill during the last two days before the final adjournment.

§ 39 (38). In *Evans v. Browne*,³⁹ the act appears without the governor's approval. It was accompanied, however, by a statement signed by the governor, and it may be inferred he caused it to be filed. In his statement he explains that it was a house bill amended in the senate, and the amendments concurred in by the house the day after forty-two members had resigned by delivering their resignations to him in writing, and thereby as claimed reducing the number below a constitutional quorum. The bill was certified by the presiding officers. It was held that where a statute is authenticated by the signature of the presiding officers of the two houses, the courts will not search further to ascertain whether such facts existed as gave constitutional warrant to those officers to thus authenticate the act as having received legislative sanction in such manner as to give it the force of law. The court says: "The framers of our government have not constituted it [the judiciary] with faculties to supervise co-ordinate departments and correct or prevent abuses of their authority. It cannot authenticate a statute; that power does not belong to it; nor can it keep the legislative journal. It ascertains the statute law by looking at its authentication, and then its function is merely to expound and administer it. It cannot, we think, look beyond that authentication, because of the constitution itself."⁴⁰

§ 40 (39). In *Bender v. State*,⁴¹ it was held not for the court to look beyond the enrolled act of the legislature to ascertain whether there had been a compliance with the in-

³⁹ 30 Ind. 514, 95 Am. Dec. 710.

⁴⁰ N. E. 1051; *State v. Board of Com'rs*, 140 Ind. 506, 40 N. E. 118.

⁴¹ There is the same ruling in the following cases: *Western Union Tel. Co. v. Taggart*, 141 Ind. 281,

⁴¹ 53 Ind. 254.

junction of the constitution that "No bill shall be presented to the governor within the last two days next preceding the final adjournment of the general assembly."

§ 41. **Same — Kentucky.**—The subject has received careful consideration in a recent case in Kentucky. The court held that the enrolled bill signed by the presiding officers and approved by the governor was conclusive evidence of its passage according to the constitution. The reasoning of the court is very persuasive and is in part as follows: "That the act or successive acts of some agency somewhere or somehow must be held conclusive is entirely evident, unless we open the doors to all competent proof, including that of the member on the floor, an absurdity not to be thought of. The result is we must accept as conclusive either the entries of the clerk in the journals or the more deliberate acts of the presiding officers.

"In some of the courts, where the journals are held to be competent evidence to impeach the enrolled bill, it is said that when those records are merely silent the presumption is absolute that the required steps were in fact taken. This seems to us hardly logical. . . . These courts assume that the failure of the clerk to make the entry and in this violate the constitution requiring the entry to be made was an oversight or mistake, and treat the entry as made, supplying the omission, and yet are not willing to assume it to be a mistake or mere misapprehension of the inferior officer, if an entry is made, showing steps taken not in conformity with the constitutional requirements.

"Even if resort is had to the journals it would seem as consistent to overlook the sins of commission by the clerk, and treat his entry showing a violation of the constitution as not true, as to overlook his sins of omission and supply the defects in his record. To avoid the necessity of resorting to these fine-spun distinctions we are convinced that the consistent and safe rule is to assume that the legislature, in obedience to the constitution, has taken the steps required by that instrument in the passage of every law, attested by

the signatures of its presiding officers, the journals to the contrary notwithstanding.

“The enrolled bill, so attested and signed and approved by the executive, is easy of access and inspection, but what shall we say of the journals? At the session at which the law now under consideration was adopted those records consist of over 4,000 pages. They seem to have been hurriedly and imperfectly indexed, as in the nature of things they must ever be. The assiduous lawyer who plods through these volumes may fail to find the evidence of an important step required by the constitution to support a statute which has been promulgated as the law of the land, and the court in this case declares as a matter of fact that the *prima facie* law so promulgated is not, in fact, the law. In an adjoining circuit the court is more fortunate, and the missing step is found, or the erroneous entry is found corrected elsewhere in the record. So the law is upheld, and this confusing result will be reached, not because the law depends upon the testimony or the pleadings in any given case, for the courts must take judicial notice of the journals, if they are controlling, as well as of the signatures of the presiding officers, if these are to be held conclusive; but the confusion comes from the nature of the record to be inspected. This is usually prepared by the subordinate officers hurriedly, amidst the excitement and confusion incident to legislative bodies, and with small concern for those details which are to become so important if the record is to be subjected to judicial scrutiny.

“But it is said, since the constitution requires the journals to be kept, it must be because they are to be used as evidence of legislative compliance or non-compliance with the constitutional requirements. We can see, however, much use for these journals other than the one suggested. Besides being necessary for the conduct of the business, it is to be remembered that our government is a representative one, and the journals show the respective parts borne by each representative in the enactment of the laws and the

conduct of the public business. Responsibility cannot be shifted or made to rest upon the body as a whole. We know that the enrollment of bills receives careful attention at the hands of special committees for that purpose. It is the final act of the body, the climax of the work before the finishing hand of the presiding officer sets his approval thereto. It receives and merits attention for that reason, and there is small room for imposition or fraud. The enrolled act is well nigh necessarily the very act passed by the body, but the chances of mistake are very great in the make-up of the journals, as they are ordinarily kept, and if it be understood that the enrolled bill may be impeached by them the chances of fraud are likewise great. They are usually read from loose sheets or hurriedly made memoranda, and are approved with slight attention, and then passed to the journal clerk or some copyist, to be transcribed formally in the journal. They receive usually no further consideration at the hands of the body.”⁴²

§ 42. Same — Texas, Washington, South Carolina.— The same ruling has been made in each of these states. The Texas supreme court says: “Our constitution provides that, after the passage of a bill, it shall be signed by the presiding officer of each house in presence of the house; and we are of opinion that when a bill has been so signed, and has been submitted to and approved by the governor, it was intended that it should afford conclusive evidence that the act had been passed in the manner required by the constitution. Such being the rule of the common law, we think, in the absence of something in the constitution expressly showing a contrary intention, it is fair to presume that the same

⁴² *Lafferty v. Huffman*, 99 Ky. 80, 35 S. W. 123, 82 L. R. A. 203. In this case the journals failed to show the necessary vote on the final passage of the bill, which the constitution required to be entered therein. There is the same holding in the following cases: *Commonwealth v. Shelton*, 99 Ky. 120, 35 S. W. 128; *Commonwealth v. Hardin Co. Ct.*, 99 Ky. 188, 35 S. W. 275; *Wilson v. Hines*, 99 Ky. 221, 35 S. W. 627, 87 S. W. 148. Compare *Norman v. Kentucky Board of Managers*, 93 Ky. 537, 20 S. W. 901, 18 L. R. A. 556.

rule should prevail in this state. There is no provision in the constitution indicating in any direct manner such contrary intention; and the fact that it is provided that journals shall be kept and that certain things should be entered therein we think insufficient to show any such purpose.”⁴³

In *State v. Jones*⁴⁴ it is said: “Each of the three departments into which the government is divided are equal, and each department should be held responsible to the people it represents, and not to the other departments of the government, or either of them. . . . To preserve the harmony of our form of government it must be held that these several mandatory provisions are addressed to the department which is called upon to perform them, and that neither of the other departments can in any manner coerce that department into obedience thereto. Courts have gone behind the final records of the legislative department upon what seems to us a false theory. They have assumed that the mandatory provisions of the constitution are safer, if the enforcement thereof is intrusted to the judicial department,

⁴³ *Williams v. Taylor*, 88 Tex. 667, 672, 19 S. W. 156. In this case the court further says: “It would seem upon first blush that there should be a broad distinction between the authority to declare an act of the legislature void for the want of power to pass the law in any manner, and the jurisdiction to annul a statute upon the ground that some provision of the constitution as to the mode of its passage has not been observed. The same distinction exists with reference to the judgments of the courts themselves. If, when the validity of a judgment is called in question, it appear that the court was without jurisdiction — that is to say, that it had no power to hear and determine the case and to render any

judgment in the premises,—the judgment will be held void in any suit in which its validity may be involved. But if the court have jurisdiction no other court would have power in any collateral proceeding to revise its judgment, however irregular its proceedings may have been. Much stronger reasons exist why we should hesitate to annul the action of the legislature upon grounds of irregularity in its procedure than exist when we are asked to declare void the judgment of a court.” p. 671. For prior cases see *Blessing v. Galveston*, 42 Tex. 641; *Houston, etc. R. R. Co. v. Odum*, 53 Tex. 343.

⁴⁴ 6 Wash. 452, 461-463, 84 Pac. 201, 23 L. R. A. 340.

than if so intrusted to the legislature; in other words, they have acted upon the presumption that their department is the only one in which sufficient integrity exists to insure the preservation of the constitution. How the courts have obtained this idea is somewhat difficult to ascertain, but that they entertain it, and have allowed it to influence their decisions, is so evident that even a superficial examination of such decisions will satisfy any one of the fact."

The earlier cases in South Carolina supported the contrary doctrine,⁴⁵ but these were overruled in *State v. Chester*,⁴⁶ wherein the court says: "We announce that the true rule is, that when an act has been duly signed by the presiding officers of the general assembly, in open session in the senate-house, approved by the governor of the state, and duly deposited in the office of the secretary of state, it is sufficient evidence, nothing to the contrary appearing on its face, that it passed the general assembly, and that it is not competent either by the journals of the two houses, or either of them, or by any other evidence, to impeach such an act. And this being so, it follows that the court is not at liberty to inquire into what the journals of the two houses may show as to the successive steps which may have been taken in the passage of the original bill."

§ 43. Same — United States supreme court.— In *Field v. Clark*,⁴⁷ the claim was made that an act of congress never became a law, for the reason that the journals showed that, as it passed the houses, it contained a section not found in the enrolled bill. The bill, however, was duly certified by the presiding officers of the two houses, approved by the president and deposited with the secretary of state. The court held that this enrolled bill was conclusive evidence of its passage in the form in which it there appeared. We quote from the opinion as follows: "As the president has

⁴⁵ *State v. Platt*, 2 S. C. 150, 16 Am. Rep. 647; *State v. Hagood*, 13 S. C. 46; *State v. Smalls*, 11 S. C. 262; *Bond Debt Cases*, 12 S. C. 200.

⁴⁶ 39 S. C. 307, 17 So. 752.

⁴⁷ 143 U. S. 649, 12 S. C. Rep. 495, 36 L. Ed. 294.

no authority to approve a bill not passed by congress, an enrolled act in the custody of the secretary of state, and having the official attestations of the speaker of the house of representatives, of the president of the senate, and of the president of the United States, carries on its face a solemn assurance by the legislative and executive departments of the government, charged, respectively, with the duty of enacting and executing the laws, that it was passed by congress. The respect due to coequals and independents requires the judicial department to act upon that assurance, and to accept, as having passed congress, all bills authenticated in the manner stated; leaving the courts to determine, when the question properly arises, whether the act, so authenticated, is in conformity with the constitution. . . .

“It is admitted that an enrolled act, thus authenticated, is sufficient evidence of itself — nothing to the contrary appearing upon its face — that it passed congress. But the contention is, that it cannot be regarded as a law of the United States if the journal of either house fails to show that it passed in the precise form in which it was signed by the presiding officers of the two houses, and approved by the president. It is said that, under any other view, it becomes possible for the speaker of the house of representatives and the president of the senate to impose upon the people as a law a bill that was never passed by congress. But this possibility is too remote to be considered in the present inquiry. It suggests a deliberate conspiracy to which the presiding officers, the committees on enrolled bills and the clerks of the two houses must necessarily be parties, all acting with a common purpose to defeat an expression of the popular will in the mode prescribed by the constitution. Judicial action based upon such a suggestion is forbidden by the respect due to a co-ordinate branch of the government. The evils that may result from the recognition of the principle that an enrolled act, in the custody of the secretary of state, attested by the signatures of the presiding officers of the two houses of congress, and the ap-

proval of the president, is conclusive evidence that it was passed by congress, according to the forms of the constitution, would be far less than those that would certainly result from the rule making the validity of congressional enactments depend upon the manner in which the journals of the respective houses are kept by the subordinate officers charged with the duty of keeping them.”⁴⁸

§ 44 (41). Courts holding enrolled act not conclusive — Constitutional provisions as to procedure mandatory.— The authority of the organic law is universally acknowledged; it speaks the sovereign will of the people. The sovereign power of the state being inherently in them, their injunctions in the constitution regarding the process of legislation are as authoritative as are those touching the substance of it. If the former are treated as directory to the legislature, acts passed in violation of them, either by intention, inadvertence, or erroneous construction, are nevertheless valid; and the same would be true of like violations of the constitution in respect to the substance of legislation. The law has always been recognized as clear and indisputable, and has been settled without dissent, that acts which

⁴⁸ This ruling has been followed in later cases. *Lyons v. Woods*, 153 U. S. 649, 14 S. C. Rep. 959, 38 L. Ed. 854; *Harwood v. Wentworth*, 162 U. S. 547, 16 S. C. Rep. 890, 40 L. Ed. 1069. In the latter case the court says: “We see no reason to modify the principles announced in *Field v. Clark*, and, therefore, hold that, having been officially attested by the presiding officers of the territorial council and house of representatives, having been approved by the governor, and having been committed to the custody of the secretary of the territory, as an act passed by the territorial legislature, the act of March 21, 1895, is to be taken to have been enacted

in the mode required by law, and to be unimpeachable by the recitals, or omission of recitals, in the journals of legislative proceedings which are not required by the fundamental law of the territory to be so kept as to show everything done in both branches of the legislature while engaged in the consideration of bills presented for their action.” And see *Comstock v. Tracy*, 46 Fed. 162; *Gardner v. Collector*, 6 Wall. 499, 18 L. Ed. 890; *South Ottawa v. Perkins*, 94 U. S. 260, 24 L. Ed. 154; *Post v. Supervisors*, 105 U. S. 667; *San Mateo County v. Railroad Co.*, 8 Sawyer, 238.

are unconstitutional on their face are nullities. And it was settled early in our constitutional jurisprudence that it was the peculiar function and duty of the judiciary to pronounce on their validity. In the exercise of this function the judiciary does not trench on the domain of the legislative department, though it pronounces judgment on its official work. The courts are bound by statutes when they are constitutional, but when otherwise it is the duty of the courts to treat them as void. Acts which contravene any provision of the constitution in their substance are invalid though the constitution has not declared that consequence. The function of the courts is the same to determine the validity of acts questioned on the ground of having been passed by a proceeding not in accordance with the procedure prescribed in the constitution. In a large majority of the states in which the question has arisen, the courts have held constitutional provisions in reference to parliamentary procedure in legislation to be mandatory, and against permitting any careless or dishonest officer's certificate or use of the great seal, or filing for record of documents having the form of legislative acts, to give the force of law to such acts, if they have not been constitutionally enacted. These courts unite in holding that a valid statute can be passed only in the manner prescribed by the constitution; and when the provisions of that instrument in regard to the manner of enacting laws are disregarded in respect to a particular act, it will be declared a nullity though having the forms of authenticity.⁴⁹ The foregoing remains as writ-

⁴⁹ *Alabama*: Jones v. Hutchinson, 43 Ala. 721; Moody v. State, 48 Ala. 115, 17 Am. Rep. 28; State v. Buckley, 54 Ala. 599; Dane v. McArthur, 57 Ala. 454; Perry County v. Railroad Co., 58 Ala. 546; Moog v. Randolph, 77 Ala. 597; Sayre v. Pollard, 77 Ala. 608; Stein v. Leeper, 78 Ala. 517; Robertson v. State, 180 Ala. 164, 30 So. 494.

Arkansas: Burr v. Ross, 19 Ark. 250; Vinsant v. Knox, 27 Ark. 266; State v. Little Rock, etc. R. R. Co., 31 Ark. 701; Worthen County Clerk v. Badgett, 32 Ark. 496; Smithee v. Garth, 33 Ark. 17; State v. Crawford, 35 Ark. 237; Smithee v. Campbell, 41 Ark. 471; Webster v. Little Rock, 44 Ark. 536; State v. Corbett, 61 Ark. 226, 32 S. W. 686.

ten in the first edition. It is no longer true that "in a large majority of the states" the courts have held that the enrolled act may be impeached by a resort to the journals. A comparison will show that the courts are now about equally divided on the question. The current of judicial decision

Colorado: In re Roberts, 5 Colo. 525; Robertson v. People, 20 Colo. 279, 88 Pac. 826. See In re General Appropriation Bill, 16 Colo. 539, 29 Pac. 379.

Florida: State v. Green, 36 Fla. 154, 18 So. 384; State v. Hooker, 36 Fla. 858, 18 So. 767.

Illinois: Spangler v. Jacoby, 14 Ill. 279, 58 Am. Dec. 571; People v. Starne, 35 Ill. 121; People v. De Wolf, 62 Ill. 253; Ryan v. Lynch, 68 Ill. 160; Miller v. Goodwin, 70 Ill. 659; Illinois Central R. R. Co. v. People, 143 Ill. 434, 33 N. E. 133, 19 L. R. A. 119; People v. Knopf, 198 Ill. 340, 64 N. E. 1127.

Kansas: State v. Francis, 26 Kan. 724; Homzighausen v. Knoche, 58 Kan. 646, 50 Pac. 879; State v. Andrews, 64 Kan. 474, 67 Pac. 870.

Maryland: Berry v. Baltimore, etc. R. R. Co., 41 Md. 446, 20 Am. Rep. 69; Legg v. Mayor, 42 Md. 203.

Michigan: Green v. Graves, 1 Doug. 351; People v. Mahaney, 18 Mich. 481; Attorney-General v. Joy, 55 Mich. 94; Sackrider v. Board of Supervisors, 79 Mich. 59, 44 N. W. 165; People v. Burch, 84 Mich. 408, 47 N. W. 765; Fillmore v. Van Horn, 129 Mich. 52, 88 N. W. 69.

Minnesota: Board of Supervisors v. Heenan, 2 Minn. 330; State v. Hastings, 24 Minn. 78; Burt v. Winona, etc. R. R. Co., 31 Minn. 472, 18 N. W. 285, 289; Palmer v. Zumbrota, 72 Minn. 266, 75 N. W. 380; Miesen v. Canfield, 64 Minn. 513, 67

N. W. 632; Kelley v. Gallup, 67 Minn. 169, 69 N. W. 812.

Nebraska: State v. McLelland, 18 Neb. 236; In re Granger, 56 Neb. 260, 76 N. W. 588; State v. Abbott, 59 Neb. 106, 80 N. W. 499; Webster v. Hastings, 59 Neb. 563, 81 N. W. 510; State v. Burlington, etc. R. R. Co., 60 Neb. 741, 84 N. W. 254; State v. Fremont, etc. R. R. Co., 60 Neb. 749, 84 N. W. 257; State v. Frank, 60 Neb. 327, 83 N. W. 74; State v. Frank, 61 Neb. 679, 85 N. W. 956.

New Hampshire: Opinion of Justices, 35 N. H. 579; Opinion of Justices, 52 N. H. 622.

Ohio: Fordyce v. Goodman, 20 Ohio St. 1; State v. Price, 8 Ohio C. C. 25. And see State v. Smith, 44 Ohio St. 348, 7 N. E. 447; State v. Kiesewetter, 45 Ohio St. 254, 12 N. E. 807.

Oregon: Currie v. Southern Pac. Co., 21 Ore. 566, 28 Pac. 884; State v. Rogers, 22 Ore. 348, 30 Pac. 74; McKinnon v. Cotner, 30 Ore. 588, 49 Pac. 956. But after lapse of ten years the court refuses to go back of the enrolled act. Mitchell v. Campbell, 19 Ore. 198, 24 Pac. 455.

Tennessee: Memphis F. Co. v. Mayor, 4 Cold. 419; Gaines v. Horigan, 4 Lea, 608; Williams v. State, 6 Lea, 549; Trading Stamp Co. v. Memphis, 101 Tenn. 181, 47 S. W. 136; Brewer v. Huntingdon, 86 Tenn. 782, 9 S. W. 166; Nelson v. Haywood County, 91 Tenn. 596, 20 S. W. 1.

in the last ten years has been strongly against the right of the courts to go back of the enrolled act. Undoubtedly the decision of the supreme court of the United States in *Field v. Clark*⁵⁰ has had much to do in creating and augmenting this current, but it may also be due to the greater simplicity, certainty and reasonableness of the doctrine, which holds the enrolled act to be conclusive. Many courts and judges, while feeling compelled to follow former decisions holding that the enrolled act may be impeached by the journals, have done so reluctantly and have expressed doubts as to the validity of the doctrine,⁵¹ and in many cases, as will appear in the following sections, have qualified and restricted it in important particulars.

§ 45 (42). *Legislative journals as evidence.*—The subject of proof has been a prominent one in the discussion of

Utah: *Lyman v. Martin*, 2 Utah, 136; *Ritchie v. Richards*, 14 Utah, 345, 47 Pac. 670.

Virginia: *Wise v. Bigger*, 79 Va. 369.

West Virginia: *Osburn v. Staley*, 5 W. Va. 85, 13 Am. Rep. 640; *Price v. Moundsville*, 43 W. Va. 523, 27 S. E. 218, 64 Am. St. Rep. 878.

Wisconsin: *Meracle v. Down*, 64 Wis. 323, 25 N. W. 412; *McDonald v. State*, 80 Wis. 407, 50 N. W. 185; *In re Ryan*, 80 Wis. 414, 50 N. W. 187; *Milwaukee County v. Isenring*, 109 Wis. 9, 85 N. W. 131, 58 L. R. A. 635.

Wyoming: *Brown v. Nash*, 1 Wyo. 85; *State v. Swan*, 7 Wyo. 166, 51 Pac. 209, 75 Am. St. Rep. 889.

Additional cases from some of the states in the foregoing list will be found cited in the following sections.

⁵⁰ 143 U. S. 649, 12 S. C. Rep. 495, 36 L. Ed. 294.

⁵¹ *People v. Starne*, 35 Ill. 121; *State v. Andrews*, 64 Kan. 474, 67

Pac. 870; *Webster v. Hastings*, 56 Neb. 669, 77 N. W. 127; *State v. Frank*, 60 Neb. 327, 83 N. W. 74; S. C., 61 Neb. 679, 85 N. W. 956. In the Illinois case the court says: "We are not, however, prepared to say that a different rule might not have subserved the public interest equally well, leaving the legislature and the executive to guard the public interest in this regard, or to become responsible for its neglect." p. 136. In *State v. Moore*, 37 Neb. 13, 55 N. W. 299, occurs the following: "Were the question a new one in this state, we would say that a bill duly deposited in the office of the secretary of state, bearing the signatures of the presiding officers of the respective houses of the legislature and of the governor, imports absolute verity, and that the courts could not look beyond the signatures of these officers to ascertain what either house has done as to any items in said bill." p. 15.

the constitutional provisions relative to legislative procedure. The inconvenience, and sometimes great hardship, to the public resulting from allowing records and published statutes to be, at any time, modified or avoided by extrinsic evidence has been the principal cause of the diversity of judicial opinion which exists on this subject. The tendency, however, of the law's growth is to preserve the supremacy of constitutional authority, leaving it to the wisdom of the legislature to mitigate any incidental inconvenience by closer observance of the prescribed procedure, and more diligent attention to the making and preservation of a public record of the essentials. The cases cited in the preceding section hold the constitutional injunctions imperative; and as the constitutions require the keeping and publication of legislative journals, these are treated as sources of information to be relied on by the courts as well as the public. In *Fordyce v. Godman*,⁵² the court says "if it could be shown that the requisite vote were not given on the passage of a bill, and the evidence were rejected because the bill was properly authenticated, the court would, in effect, hold that a single presiding officer might, by his signature, give the force of law to a bill which the journal of the body over which he presides and which was kept under the supervision of the whole body showed not to have been voted for by the constitutional number of members." The court concluded that "the plain provisions of the constitution are not to be thus nullified, and the evidence which it requires to be kept under the supervision of the collective body must control when a question arises as to the due passage of a bill."⁵³

§ 46. **Unreliability of the journals.**—There is necessarily a substantial similarity in the manner in which the orig-

⁵² 20 Ohio St. 1.

⁵³ *Berliner v. Town of W.*, 14 Wis. 378; *Bound v. Railroad Co.*, 45 Wis. 543; *Meracle v. Down*, 64 Wis. 323, 25 N. W. 412; *South Ottawa v. Per-*

kins, 94 U. S. 260, 24 L. Ed. 154; *Osburn v. Staley*, 5 W. Va. 86; *Berry v. Baltimore, etc. R. R. Co.*, 41 Md. 446, 20 Am. Rep. 69; *Legg v. Mayor, etc.*, 42 Md. 208.

inal material for legislative journals is made up. As business progresses in the legislative body, the secretary or clerk takes down memoranda of what is transacted. His work is facilitated by the use of printed or stencil forms, printed lists of members, for use on roll call, and the like. These memoranda, partly printed and partly written, together with messages, original bills, reports of committees and other documents, all on loose sheets of paper, are the original material for the journal. The memoranda are necessarily hastily made and often in the midst of much confusion and excitement. Sometimes these original memoranda and documents are loosely fastened together, and constitute the journal to which the courts resort in order to determine whether an enrolled bill has been duly passed.⁵⁴ Sometimes these memoranda are copied into a book: which becomes the authoritative journal by which the existence of legislative acts is tried.⁵⁵ In all cases the journals are printed, sometimes from the original memoranda and sometimes from a copy especially made for that purpose. Sometimes there are thus preserved three journals, as it were: the original memoranda and documents, the written and printed journal, and sometimes these all differ each from the others.⁵⁶ Sometimes the journals are read and approved, and sometimes their reading is dispensed with, even for the whole session.⁵⁷ The unsatisfactory nature of this evidence is frequently pointed out not only by the courts which refuse to resort to it, but also by the courts which do.

⁵⁴ In re Roberts, 5 Colo. 525; State v. Frank, 60 Neb. 827, 83 N. W. 74; S. C., 61 Neb. 679, 85 N. W. 956. In the first case the court refers to the journals as follows: "They are the original sheets of the clerk upon which minutes or memoranda of the daily proceedings of the body are set down in the order of their occurrence, partly in ink and partly in pencil, and in which are pasted the partly printed and partly writ-

ten reports, messages and voting lists or roll-calls of the houses, and with many abbreviations of words phrases and recitals." p. 530.

⁵⁵ Montgomery Beer Bottling Works v. Gaston, 126 Ala. 425, 28 So. 497, 85 Am. St. Rep. 42.

⁵⁶ Homzighausen v. Knoche, 58 Kan. 646, 50 Pac. 879.

⁵⁷ People v. Burch, 84 Mich. 408, 47 N. W. 765.

The supreme court of Washington in commenting on this subject says: "Under the practice prevailing in the legislature of this state, and in most of the other states, there is very little assurance that the journal will fully and accurately show the proceedings of the body for which it is kept. The practice in nearly all such bodies is to have the journal read, if read at all, from loose slips of paper made up partly in writing and partly by pasted slips, and, after being thus read, ordered approved. It is also a fact of which every one has knowledge, that often upon such reading there is such inattention on the part of members of the legislature that gross errors might pass unnoticed. The journal as thus read and approved from loose slips of paper is then passed to the journal clerk, and by him, or under his direction, transcribed into a book, and the slips then carelessly preserved or entirely destroyed. The transcription of these minutes, without any further action on the part of the legislature, or of any person but the one who makes it, except superficial examination by the journal clerk and possibly by the presiding officer, becomes the formal journal. It follows that the chances of mistake are very great, and for fraud on the part of the copyist even greater."⁵⁸

The Nebraska supreme court thus refers to the journals in question in the case: "In this case we have made a very careful examination of the journal of the house. For so important a public record, it is, we must say, strangely fashioned — wonderfully made. It consists of loose sheets of paper bound together with a frayed and fragile twine. The vote on roll call is shown by attaching with a pin or mucilage a printed list of the members voting yea and nay, to a piece of paper showing the question upon which the vote was taken. The sheet containing the record of the vote on House Roll 251, the bill here in question, indicates that some other paper was once fastened to it with a pin. The other paper, which, according to the evidence, showed the yea and nay vote, is gone; the pin has disappeared, and

⁵⁸ State v. Jones, 6 Wash. 452, 34 Pac. 201, 23 L. R. A. 840.

counsel for respondent insist that the law has gone with it.”⁵⁹

And the supreme court of Kansas, though holding that an enrolled act may be impeached by the journals, says of this evidence: “It is no reflection upon legislative integrity, no criticism of legislative methods, to say that the journals of the houses are often carelessly, inaccurately and partially kept. They are often hurriedly made up, written by clerks having little aptitude for the work and slight sense of responsibility in its performance. Upon many days, especially as the session advances and the business accumulates, the saving of time becomes important, and the reading of the journal of the preceding day is dispensed with, so that mistakes fail of correction and unfortunately pass into forms of legislative history. It is also a notorious fact that in many cases, to a great extent in all cases, the journals are not made up until after the legislative session has closed. They are then put into such methodical shape as can be done, made up of the loose and disconnected memoranda noted from day to day as the legislative session progressed. These facts justify courts in attaching less weight to journals of legislative proceedings as evidence of the non-enactment of laws than they would otherwise possess.”⁶⁰

§ 47 (43). **Evidence to impeach enrolled bill — Legislative journals.**— The courts have been exceedingly conservative in their researches involving the validity of statutes having a regular record or authentication. They have not opened the door to all kinds of evidence nor freely consulted all sources of information. They have given great weight to such authentication; irregularity by departing from a practice laid down by the constitution is not readily inferred, where written evidence should exist, in the absence of proof of that nature.

⁵⁹ *State v. Frank*, 60 Neb. 327, 196; *Miesen v. Canfield*, 64 Minn. 334, 335, 83 N. W. 74. See also *Laferty v. Huffman*, 99 Ky. 80, 85 S. W. 123, 82 L. R. A. 208; *Lincoln v. Haugan*, 45 Minn. 451, 48 N. W.

518, 67 N. W. 632. ⁶⁰ *In re Taylor*, 60 Kan. 87, 55 Pac. 340.

The intention of constitutional provisions that they should operate as conditions, or be treated as mandatory, is inferred largely from the accompanying requirement that legislative journals be kept, preserved and given publicity by publication, and that certain steps in the process of legislation be therein recorded.⁶¹ The parliamentary history of any act in question in the legislative journals is the only evidence which the cases generally recognize,⁶² though some cases intimate that other evidence may be considered.⁶³ Parol evidence of the action of the two houses is excluded.⁶⁴ So parol evidence is not admissible to show that a quorum was not present,⁶⁵ or that the bill passed was different from the enrolled act.⁶⁶ Nor is the original bill with its indorsements

⁶¹ *Osburn v. Staley*, 5 W. Va. 86; *People v. Mahaney*, 13 Mich. 481; *Spangler v. Jacoby*, 14 Ill. 297, 58 Am. Dec. 571; *State v. Buckley*, 54 Ala. 599; *Jones v. Hutchinson*, 43 id. 721.

⁶² *Moog v. Randolph*, 77 Ala. 597; *Osburn v. Staley*, 5 W. Va. 86; *Happel v. Brethauer*, 70 Ill. 166, 22 Am. Rep. 70; *Wise v. Bigger*, 79 Va. 269; *State v. McLelland*, 18 Neb. 236; *Board of Supervisors v. Heenan*, 2 Minn. 330; *People v. Mahaney*, 13 Mich. 481; *Webster v. Little Rock*, 44 Ark. 536; *Smithee v. Campbell*, 41 id. 471; *Weill v. Kenfield*, 54 Cal. 111; *State v. Francis*, 26 Kan. 724; *Williams v. State*, 6 Lea, 549; *Moody v. State*, 48 Ala. 115, 17 Am. Rep. 28; *Gaines v. Harrigan*, 4 Lea, 603; *Perry County v. Railroad Co.*, 58 Ala. 546; *Jones v. Hutchinson*, 43 id. 721; *Stein v. Leeper*, 78 id. 517; *Spangler v. Jacoby*, 14 Ill. 297, 58 Am. Dec. 571; *Ex parte Howard-Harrison Iron Co.*, 119 Ala. 484, 24 So. 516, 72 Am. St. Rep. 928; *State v. Wilson*, 123 Ala. 259, 26 So. 482; *Robertson*

v. State, 130 Ala. 164, 30 So. 494; *Jackson v. State*, 131 Ala. 21, 31 So. 380; *Fullington v. Williams*, 98 Ga. 807, 27 S. E. 183; *Fillmore v. Van Horne*, 129 Mich. 52, 88 N. W. 69; *Sjoberg v. Security Savings & Loan Ass'n*, 73 Minn. 203, 75 N. W. 1116, 72 Am. St. Rep. 616; *In re Granger*, 56 Neb. 260, 76 N. W. 588; *State v. Abbott*, 59 Neb. 106, 80 N. W. 499; *State v. Smith*, 44 Ohio St. 348, 7 N. E. 447; *State v. Kiese-wetter*, 45 Ohio St. 254, 12 N. E. 807; *State v. Swan*, 7 Wyo. 166, 51 Pac. 209, 75 Am. St. Rep. 889.

⁶³ *State v. Platt*, 2 S. C. 150, 16 Am. Rep. 647.

⁶⁴ *Berry v. Baltimore, etc. R. R. Co.*, 41 Md. 446, 20 Am. Rep. 69; *Wise v. Bigger*, 79 Va. 269; *Sack-rider v. Board of Supervisors*, 79 Mich. 59, 44 N. W. 165; *Sjoberg v. Security Savings & L. Ass'n*, 73 Minn. 203, 75 N. W. 1116, 72 Am. St. Rep. 616.

⁶⁵ *Auditor-General v. Supervisors*, 89 Mich. 552, 51 N. W. 483.

⁶⁶ *Ames v. Union Pac. R. R. Co.*, 64 Fed. 165.

admissible for the purpose of impeaching the enrolled act or contradicting the journals.⁶⁷ In short, the enrolled bill and the journals are the only evidence which the courts will consider, and these cannot be aided or contradicted by other documents or evidence of any kind.⁶⁸

In *State v. Frank*⁶⁹ the house journal failed to show the yeas and nays on the final passage of the bill in question, but it was held competent to show by parol that the vote was so taken and entered in the journal and that the journal had been mutilated by removing the sheet which contained this matter. The court says: "It is doubtless the duty of courts to take judicial notice of the laws enacted by the legislature, and of the records kept by the two branches thereof. To enable the court to ascertain what was done by the legislature, it may call to its assistance evidence of the character of that produced in the trial below. This evidence did not contradict the house journal; it merely established the record as in fact made by the legislature. It is fallacious to argue that such evidence contradicts the record; it merely supplies missing parts thereof and enables the court to know what the record in fact was when the legislature made it; not what it is after having been mutilated, through either accident or design. To hold that such evidence is not competent would result in the absurdity that, in case the journals of a session should be destroyed, all the acts passed at that session would be invalidated. The journals of the legislature are like any other records. Should they be lost or destroyed in whole or in part, the missing portions can be supplied by evidence of the same character as required when

⁶⁷ In *re Granger*, 56 Neb. 260, 76 N. E. 807; *White v. Hinton*, 3 Wyo. N. W. 588; *State v. Abbott*, 59 Neb. 753, 30 Pac. 953, 17 L. R. A. 66; 106, 80 N. W. 499; *State v. Jones*, United States v. Ballin, 144 U. S. 22 Ohio C. C. 682. 1, 12 S. C. Rep. 507, 86 L. Ed. 521.

⁶⁸ *Ex parte Howard-Harrison Iron Co.*, 119 Ala. 484, 24 So. 516, 72 43 La. Ann. 590, 9 So. 776.

Am. St. Rep. 928; *Jackson v. State*, ⁶⁹ 60 Neb. 327, 83 N. W. 74; S. C. 131 Ala. 21, 31 So. 380; *State v. on rehearing*, 61 Neb. 679, 85 N. W. Kiesewetter, 45 Ohio St. 254, 12 956.

the contents of any lost or destroyed record are to be established or proved."⁷⁰

The journals cannot be aided or helped out by reference to the original papers and memoranda kept by the clerk and from which the journals proper were made up.⁷¹ Nor has the clerk any right to correct the journal after it has been filed with the secretary of state for safe keeping, and any such corrections will be disregarded by the court.⁷² Where the senate at the beginning of the session dispensed with the reading of the journal for the entire session and authorized the secretary to make all necessary corrections from day to day, it was held that corrections could be made at any time during the session, and where such corrections appeared at the end of the journal, it was held that it would be presumed that they were made during the session.⁷³

In another case the printed journal of the senate showed that a certain act was passed by a vote of twenty-six yeas to seven nays, and gave the names respectively. The written journal gave the same vote but did not give the names of those voting in the negative, and in recording the names of those voting in the affirmative gave the seven names shown by the printed journal to have voted in the negative. The act was held to have been properly passed, and the grounds of the decision are stated as follows: "The written

⁷⁰ State v. Frank, 61 Neb. 679, 680, 681, 85 N. W. 956.

⁷¹ Montgomery Beer Bottling Works v. Gaston, 126 Ala. 425, 28 So. 497, 85 Am. St. Rep. 42; State v. Wilson, 128 Ala. 259, 26 So. 482.

⁷² Id. In the latter of the two cases last cited the court says: "It cannot be doubted, we think, and is indeed quite obvious, that the clerk's official connection with the original journal—all his duties with respect to it except the duty of copying it for the printer—ceases upon his delivering it to the

secretary of state for safe keeping after it has been signed by the speaker and himself. From and after that time he has no custody of it, no control over it, no right to its possession, except for the specific purpose above referred to, no power to alter it nor to prevent others altering it, and is under no duty to keep it safely or to preserve it from mutilation or interpolation."

⁷³ People v. Burch, 84 Mich. 408, 47 N. W. 735.

journal of the senate, as respects the proceedings upon the passage of this bill, is clearly defective. It is true that the statute (Gen. St. 1878, c. 5, § 23) provides that the written journal therein directed to be made and recorded 'shall be considered the true and authentic journal;' but the same section also provides the manner in which the daily record shall be prepared and printed, and which is required to be read and examined and compared each day with the minutes of the record of the clerk, and is thereafter printed and made up in the bound volumes of the journal, and 'full faith and credit' are to be given to the journals properly printed and certified. (Sec. 38.) In this case it was clearly shown that the written journal was not made as the statute required, but was made up and completed long after the adjournment of the session, from the printed journal, and that there was a mistake made by the scrivener in recording the names entered. The irregular and incomplete enrollment of the names is fully accounted for, and all doubt that the bill was passed by the requisite vote is removed."⁷⁴

A written protest incorporated in the journals and reciting certain facts was held not to be effective to contradict or invalidate the journals.⁷⁵ The courts have no power to correct or change the journals, and will not entertain a suit to compel the clerk or secretary of state to do so.⁷⁶

§ 48 (44). The journals, by being required by the constitution or laws, are records. At common law the legislative journals were not strictly records; while admissible in evidence for certain purposes, as official memorials or remembrances, they were not admissible to show that an act of parliament had not been passed according to its own rules.⁷⁷ But when required, as is extensively the case in this

⁷⁴ *Lincoln v. Haugan*, 45 Minn. 451, 48 N. W. 196.

⁷⁵ *Auditor-General v. Supervisors*, 89 Mich. 552, 51 N. W. 488. And see *Cutcher v. Crawford*, 105 Ga. 180, 31 S. E. 189.

⁷⁶ *State v. Wilson*, 128 Ala. 259, 26 So. 482; *Burkhart v. Reed*, 2 Idaho, 503, 22 Pac. 1; *Clough v. Curtis*, 2 Idaho, 523, 22 Pac. 28.

⁷⁷ *King v. Arundel*, Hob. 110.

country, by a paramount law, for the obvious purpose of showing how the mandatory provisions of that law have been followed in the methods and forms of legislation, they are thus made records in dignity, and are of great importance.⁷⁸ The legislative acts regularly authenticated are also records; the acts passed, duly authenticated, and such journals are parallel records, but the latter are superior when explicit and conflicting with the other, for the acts authenticated speak decisively only when the journals are silent, and not even then as to particulars required to be entered therein.

In *Gardner v. The Collector*,⁷⁹ Mr. Justice Miller, speaking for the whole court on the question of proving the date of the president's approval of a bill, laid down this general rule: that "on principle as well as authority, whenever a question arises in a court of law of the existence of a statute, or of the time when a statute took effect, or of the precise terms of a statute, the judges who are called upon to decide it have a right to resort to any source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer to such question; always seeking first for that which in its nature is most appropriate, unless the positive law has enacted a different rule."

§ 49 (45). Court will not act on admissions of parties.— A statute will not be declared void for having been enacted in violation of provisions of the constitution relating to procedure on the admissions of parties in pleadings or otherwise, but only on facts being ascertained from proper evidence.⁸⁰ A statute cannot be made or unmade by agreement of the parties.⁸¹ Where counsel stipulated as to what the journals showed the court refused to act upon it, but required

⁷⁸ Opinion of Justices, 35 N. H. 579; 52 id. 622; *Wise v. Bigger*, 79 Va. 269; *State v. Smalls*, 11 S. C. 262. *State v. Boise*, 5 Idaho, 519, 51 Pac. 110; *New Hannover Co. Com'rs v. Derosset*, 129 N. C. 275, 40 S. E. 43.

⁷⁹ 6 Wall. 499, 511, 18 L. Ed. 890.

⁸¹ *Fullington v. Williams*, 98 Ga.

⁸⁰ *Happel v. Brethauer*, 70 Ill. 166; *Legg v. Mayor, etc.*, 42 Md. 203; 807, 27 S. E. 183.

the whole journals or a certified copy to be produced.⁸² In Pennsylvania a local law was declared invalid on the admission of parties that notice of the application for the law was not given, as required by the constitution;⁸³ but in Georgia the court declined to act upon such admission in the same kind of a case.⁸⁴

In a proceeding for a *mandamus* against the state auditor of Kentucky to compel him to draw his warrant upon an appropriation for the world's fair at Chicago, he answered that the act making the appropriation was not duly passed, for the reason that on its final passage the vote was not taken by yeas and nays and entered on the journal as required by the constitution. The petitioners demurred to the answer. The court acted upon the admission made by the demurrer, and refused the *mandamus*.⁸⁵

§ 50 (46). **Presumption in favor of enrolled act.**—When an act is found lodged in the office of the secretary of state, with the public acts passed at the same session, signed by the presiding officers, approved and signed by the governor, and it is published by authority as one of the public statutes of the state, or is otherwise authenticated according to law, and in proper custody, the presumption is that it was regularly passed, unless there is evidence of which the courts take judicial notice showing the contrary.⁸⁶ The

⁸² *State v. Boise*, 5 Idaho, 519, 51 Pac. 110.

⁸³ *Chalfant v. Edwards*, 173 Pa. St. 246, 33 Atl. 1048.

⁸⁴ *Fullington v. Williams*, 98 Ga. 807, 27 S. E. 183. In *Rodman-Heath Cotton Mills v. Waxhaw*, 130 N. C. 293, 41 S. E. 488, the court appears to have acted on the admissions of parties.

⁸⁵ *Norman v. Ky. Board of Managers*, 93 Ky. 537, 20 S. W. 901, 18 L. R. A. 556. The court says: "A constitutional rule is not only for the legislature, but this and all

other courts. We must exercise our power with fidelity to it; and when we are urged to hold that the signatures to the act import what is confessed by the party asking relief to be untrue, and to enforce as law an act plainly in violation of the constitution, the court, in the exercise of its discretion in the use of this writ, should withhold it." p. 548.

⁸⁶ *Post*, § 57; *Harrison v. Gordy*, 57 Ala. 49; *Perry County v. Railroad Co.*, 58 Ala. 546; *Henderson v. State*, 94 Ala. 95, 10 So. 332; *Ex*

journals are records, and in all respects touching proceedings under the mandatory provisions of the constitution will be effectual to impeach and avoid the acts recorded as laws and duly authenticated, if the journals affirmatively show that these provisions have been disregarded. In the absence of such an affirmative showing, and even in cases of doubt, it will be presumed that a quorum was present;⁵⁷

parte Howard-Harrison Iron Co., 119 Ala. 484, 24 So. 516, 72 Am. St. Rep. 928; In re Roberts, 5 Colo. 525; Supervisors v. People, 25 Ill. 181; Larrison v. Railroad Co., 77 Ill. 11; People v. Loewenthal, 93 Ill. 191; Illinois Cent. R. R. Co. v. People, 143 Ill. 484, 33 N. E. 173, 19 L. R. A. 119; People v. Knapp, 198 Ill. 340, 64 N. E. 1127; State v. Francis, 26 Kan. 724; People v. Burch, 84 Mich. 408, 47 N. W. 765; Duluth v. Krupp, 46 Minn. 435, 49 N. W. 235; State v. Wray, 109 Mo. 594, 19 S. W. 86; State v. Field, 119 Mo. 593, 24 S. W. 752; State v. McLelland, 18 Neb. 236; Opinions of Justices, 35 N. H. 579; Opinions of Justices, 52 N. H. 622; People v. Briggs, 50 N. Y. 558; Debnam v. Chitty, 131 N. C. 657, 43 S. E. 8; Miller v. State, 3 Ohio St. 475; McKinnon v. Cotner, 30 Ore. 588, 49 Pac. 956; Speer v. Plank R. Co., 22 Pa. St. 376; Gilliland v. Baptist Church, 83 S. C. 164, 11 S. E. 684; State v. McConnell, 8 Lea, 832; Williams v. State, 6 Lea, 549; Nelson v. Haywood County, 91 Tenn. 596, 20 S. W. 1; Wise v. Bigger, 79 Va. 269; Price v. Moundsville, 48 W. Va. 523, 27 S. E. 218, 64 Am. St. Rep. 878; Bound v. Railroad Co., 45 Wis. 548; State v. Swan, 7 Wyo. 166, 51 Pac. 209, 75 Am. St. Rep. 889. In Ex parte Howard-Harrison Iron Co., 119

Ala. 484, 24 So. 516, 72 Am. St. Rep. 928, the court says: "Of course the presumption is that the bill signed by the presiding officers of the two houses and approved by the governor is the bill which the two houses concurred in passing, and the contrary must be made to affirmatively appear before a different conclusion can be justified or supported. So here, it must be made to affirmatively appear that amendments of the house bill in question were adopted by the senate and were not concurred in by the house. And this must be shown by the journals of the two houses. No other evidence is admissible. The journals can neither be contradicted nor amplified by loose memoranda made by the clerical officers of the houses. To these the courts cannot look for any purpose. Nor will it be presumed from the silence of the journals on a matter upon which it is proper for them to speak that either house has disregarded a constitutional requirement in the passage of the act, except in those cases where the organic law expressly requires the journals to show the action taken, as when it requires the yeas and nays to be entered." p. 491.

⁵⁷ Auditor-General v. Supervisors,

that the necessary readings occurred;⁸⁸ that amendments made by one branch, though extensive, were germane;⁸⁹ that they were concurred in by the other branch, though the journals may be silent.⁹⁰ If the journals are carelessly kept, the court will more readily indulge in presumptions in aid of the act.⁹¹

§ 51 (47). **Enrolled act not impeached by silence of journals.**—As all particulars of compliance with the constitution are not specially required to be entered on the journals, such compliance will be presumed in the absence of proof to the contrary; the silence of the journals will not be accepted as proof that a proceeding required and not found recorded was omitted, even though it be a proceeding required in the two houses, and such as would appear in the journals if it occurred and they contained a memorial of all that was done.⁹² The presumption of regularity is exempli-

⁸⁸ Mich. 552, 51 N. W. 483; *Debnam v. Chitty*, 131 N. C. 657, 43 S. E. 3.

⁸⁹ *McCulloch v. State*, 11 Ind. 424; *Supervisors v. People*, 25 Ill. 181; *Miller v. State*, 3 Ohio St. 475; *People v. Dunn*, 80 Cal. 211, 22 Pac. 140, 18 Am. St. Rep. 118; *Massachusetts Mut. Life Ins. Co. v. Col. L. & T. Co.*, 20 Colo. 1, 36 Pac. 793; *Illinois Central R. R. Co. v. People*, 143 Ill. 434, 33 N. E. 173, 19 L. R. A. 119.

⁹⁰ *Miller v. State*, 3 Ohio St. 475; *Pack v. Barton*, 47 Mich. 520.

⁹¹ *State v. Hastings*, 24 Minn. 78; *Walker v. Griffith*, 60 Ala. 361; *Blessing v. Galveston*, 42 Tex. 641; *Miller v. State*, 3 Ohio St. 475; *Vinsant v. Knox*, 27 Ark. 279; *English v. Oliver*, 28 id. 317; *Usener v. State*, 8 Tex. App. 177; *Worthen v. Badgett*, 32 Ark. 516; *Supervisors v. People*, 25 Ill. 181; *Ex parte Howard-Harrison Iron Co.*, 119

Ala. 484, 24 So. 516, 72 Am. St. Rep. 928; *Jackson v. State*, 131 Ala. 21, 31 So. 380; *State v. Andrews*, 64 Kan. 474, 67 Pac. 870; *McKinnon v. Cotner*, 30 Ore. 598, 49 Pac. 956; *State v. Brown*, 33 S. C. 151, 11 S. E. 641.

⁹² *In re Roberts*, 5 Colo. 525; *In re Taylor*, 60 Kan. 87, 55 Pac. 340.

⁹³ *Ante*, § 50, note 90; *Ex parte Howard-Harrison Iron Co.*, 119 Ala. 484, 24 So. 516, 72 Am. St. Rep. 928; *Jackson v. State*, 131 Ala. 21, 31 So. 380; *Keene v. Jefferson Co.*, 135 Ala. 465, 33 So. 435; *People v. Dunn*, 80 Cal. 211, 22 Pac. 140, 18 Am. St. Rep. 118; *Massachusetts Mut. Life Ins. Co. v. Col. L. & T. Co.*, 20 Colo. 1, 36 Pac. 793; *State v. Green*, 36 Fla. 154, 18 So. 334; *Butler v. State*, 89 Ga. 821, 15 S. E. 763; *State v. Andrews*, 64 Kan. 474, 67 Pac. 870; *Hollingworth v. Thompson*, 45 La. Ann. 222, 12 So. 1, 40 Am. St. Rep. 220; *People v. Burch*, 84 Mich. 408,

fied also in cases where notice is required to be published before application to the legislature for certain private or local legislation. In the absence of any entry in the journals showing such previous notice or alluding to it, it will be presumed in favor of the law that such notice was given, and that the legislature exacted proof of it.⁹³ So when the power to legislate on a certain subject depends upon the existence of certain facts, such as a specified population, it will be presumed in favor of the act passed that the facts existed.⁹⁴

In Kansas it has been held that "an enrolled statute imports absolute verity and is conclusive evidence of the passage of the act and of its validity, unless the journals of the legislature show affirmatively, clearly, conclusively and beyond all doubt that the act was not passed regularly and legally."⁹⁵ And the supreme court of Oregon is equally emphatic; and where the journals of both houses showed that an act was amended by adding a certain section, but the enrolled act did not contain such section, the court presumed that the amendment was reconsidered and defeated.⁹⁶ "If there is any room to doubt as to what the journals of the

47 N. W. 765; *State v. Field*, 119 Mo. 593, 24 S. W. 752; *State v. Long*, 21 Mont. 26, 52 Pac. 645; *Webster v. Hastings*, 59 Neb. 563, 81 N. W. 510; *Currie v. Southern Pac. Co.*, 21 Ore. 568, 28 Pac. 894; *State v. Rogers*, 22 Ore. 348, 30 Pac. 74; *Ritchie v. Richards*, 14 Utah, 345, 47 Pac. 670; *Price v. Moundville*, 43 W. Va. 523, 27 S. E. 218, 64 Am. St. Rep. 878; *Chicago, B. & Q. R. R. Co. v. Smyth*, 103 Fed. 876.

⁹³ *Walker v. Griffith*, 60 Ala. 361; *Harrison v. Gordy*, 57 id. 49; *McKemie v. Gorman*, 68 id. 442; *Brodnax v. Groom*, 64 N. C. 244; *Speer v. Mayor, etc.*, 42 Alb. L. J. 232 (Ga.); *Keene v. Jefferson Co.*, 135 Ala. 465, 33 So. 435; *Fullington v. Williams*,

98 Ga. 807, 27 S. E. 183; *Chamlee v. Davis*, 115 Ga. 266, 41 S. E. 691.

⁹⁴ *Ex parte Renfrow*, 112 Mo. 591, 20 S. W. 682; *Roby v. Shepard*, 42 W. Va. 286, 26 S. E. 278.

⁹⁵ *State v. Andrews*, 64 Kan. 474, 67 Pac. 870. And see *Chesney v. McClintock*, 61 Kan. 94, 58 Pac. 993; *In re Taylor*, 60 Kan. 87, 55 Pac. 340.

⁹⁶ *McKinnon v. Cotner*, 30 Ore. 588, 49 Pac. 956. The court says: "It nowhere appears in the journal that it did not pass in the form as actually signed by the presiding officers, and now on file in the office of the secretary of state. It is true the journals show that in its progress through the legislature an

legislature show, if they are merely silent or ambiguous, or if it is possible to explain them on the hypothesis that the enrolled statute is correct and valid, then it is the duty of the courts to hold that the enrolled statute is valid."⁹⁷

§ 52. What sufficient to impeach enrolled act.— When it clearly appears by the journals that any required proceeding was omitted; as when one of the prescribed readings did not take place, or was by title when required by sections or at length;⁹⁸ or when it appears that the bill, passed by one branch of the legislature, was in materially different terms from the bill passed by the other branch,⁹⁹ or when one branch wholly failed to pass it;¹ or when the bill approved by the governor and authenticated as the law requires is materially different from the bill passed by the two houses,² it will be held a nullity. An appropriation bill passed both houses in the legislature with an item of \$15,000

amendment was adopted which is not included in the enrolled act, but the vote by which such amendment was adopted may have been reconsidered, and the amendment defeated. At least the courts are bound to presume such to have been the case."

⁹⁷ *State v. Francis*, 26 Kan. 724, 731; *Chesney v. McClintock*, 61 Kan. 94, 99, 58 Pac. 993.

⁹⁸ *Ryan v. Lynch*, 68 Ill. 160; *Supervisors v. Heenan*, 2 Minn. 330; *Weill v. Kenfield*, 54 Cal. 111; *People v. Loewenthal*, 93 Ill. 191; *State v. Hagood*, 13 S. C. 46. See *County of San Mateo v. Railroad Co.*, 8 Am. & E. R. R. Cas. 1, 13 Fed. Rep. 722; *post*, § 54.

⁹⁹ *State v. Larche*, 105 La. 84, 29 So. 700.

¹ *Bound v. Railroad Co.*, 45 Wis. 543; *Meracle v. Down*, 64 id. 323; *Wise v. Bigger*, 79 Va. 269; *People v. De Wolf*, 62 Ill. 253; *Opinions of*

Justices, 35 N. H. 579; 52 id. 622; *Montgomery Beer Bottling Works v. Gaston*, 126 Ala. 425, 28 So. 497, 85 Am. St. Rep. 42; *Currie v. Southern Pac. Co.*, 21 Ore. 566, 28 Pac. 884; *Brewer v. Huntingdon*, 86 Tenn. 732, 9 S. W. 166; *State v. Wendler*, 94 Wis. 369, 68 N. W. 759.

² *Moog v. Randolph*, 77 Ala. 597; *Moody v. State*, 48 id. 115, 17 Am. Rep. 28; *Jones v. Hutchinson*, 43 Ala. 721; *Sayre v. Pollard*, 77 id. 608; *Stein v. Leeper*, 78 id. 517; *Legg v. Mayor, etc.*, 42 Md. 203; *State v. Liedtke*, 9 Neb. 462; *Berry v. Baltimore, etc. R. R. Co.*, 41 Md. 446, 20 Am. Rep. 69; *State v. Platt*, 2 S. C. 150, 16 Am. Rep. 647; *State v. Hagood*, 13 S. C. 46; *Rode v. Phelps*, 80 Mich. 598, 45 N. W. 493; *State v. Wendler*, 94 Wis. 369, 68 N. W. 759; *State v. Swan*, 7 Wyo. 163, 51 Pac. 209, 75 Am. St. Rep. 889. Compare *McKinnon v. Cotner*, 30 Ore. 588, 49 Pac. 956.

to pay the expenses of certain impeachment proceedings. In the enrolled bill, which was signed by the presiding officers and approved by the governor, the item was changed to \$25,000. It was held valid to the amount of \$15,000.³ The title is an essential part of an act; and where an act is passed under different titles in the two houses, or where the title of the enrolled bill differs materially from the title of the act as passed, it does not become a law.⁴ Mere verbal or immaterial differences do not vitiate.⁵ An act entitled "An act to regulate the sale of liquors in less quantities than one quart" passed the house and went to the senate. In that body it was passed with an amendment striking out of the body of the act everything relating to sales in less quantities than one quart. The house concurred in the amendment and then amended the title by striking out the words, "in less quantities than one quart." The bill was

³ *State v. Moore*, 37 Neb. 13, 55 N. W. 299. The court says: "It is now settled that this court will look into the records and journals of the two houses of the legislature to ascertain if they have complied with the constitutional provisions of the state with reference to the enactment of a law. When this is done it becomes evident that the senate did not at any time, nor did the house of representatives upon the final consideration of the bill, agree to an appropriation of \$25,000, so that the act cannot be construed as an appropriation of this sum for want of concurrence of all the law-making branches. It is equally clear that both houses did concur in the appropriation of \$15,000. This appropriation must also fail unless approved by the governor, or by the bill's becoming a law in one of the ways provided by the constitution without his approval.

The governor, by signing the bill as enrolled, expressed his approval of an appropriation of \$25,000. We think that this sum being one greater than that provided by the legislature, his approval thereof included an approval of the lesser sum."

⁴ *Fillmore v. Van Horn*, 129 Mich. 52; *Weis v. Ashley*, 59 Neb. 494, 81 N. W. 318, 80 Am. St. Rep. 704; *Chicago, B. & Q. R. R. Co. v. Smyth*, 103 Fed. 376; *Simpson v. Union Stock Yards*, 110 Fed. 799; *State v. Green*, 36 Fla. 154, 18 So. 334; *State v. Burlington, etc. R. R. Co.*, 60 Neb. 741, 84 N. W. 254.

⁵ *Illinois Central R. R. Co. v. People*, 143 Ill. 434, 33 N. E. 173, 19 L. R. A. 119; *Price v. Moundsville*, 43 W. Va. 523, 27 S. E. 218, 64 Am. St. Rep. 878; *Stow v. Grand Rapids*, 79 Mich. 595, 44 N. W. 1047; *State v. Doherty*, 8 Idaho, 384, 29 Pac. 855.

then enrolled and approved without being returned to the senate for its concurrence in the amendment of the title. The act was held valid, the court saying: "After the senate amended said bill, that part of the title referring to the quantity of liquor sold was mere surplusage, as no part of said act contained any provisions referring to the quantity. The amendment of the title, as made by the house of representatives, was not one of substance and did not invalidate the act."⁶

An act, as introduced, passed and sent to the governor, bore the title: "An act to amend sec. 4 of act No. 282 of the local acts of 1887, entitled," etc. When returned by the governor the date 1877 appeared in place of 1887. There was no act No. 282 of 1887, and the title given was the title of act No. 282 of 1877. The act was held valid.⁷ The journals showed that a bill was amended by adding sections which were not within the original title of the bill. All through the proceedings for its passage it was referred to by the original title and was reported as enrolled under that title. The enrolled bill in fact had an amended title sufficient to cover the added sections, and this was first mentioned in the message of the governor announcing the approval of the bill. The journals did not show any amendment of the title. The court, however, presumed that such amendment was made and held the act valid.⁸ The fact that a bill is referred to in different places in the journal under a somewhat different title is immaterial, if the iden-

⁶ State v. Doherty, 3 Idaho, 384, 29 Pac. 855.

⁷ Stow v. Grand Rapids, 79 Mich. 595, 44 N. W. 1047. The court says: "We think the figures '1887' in the title, as introduced and agreed to by the legislature, were simply a clerical error, and were corrected by the reading of the whole title; and that the making of it '1877'

was in harmony with the rest of the title, and but the correction of a clerical error,—a correction which would be permissible in a deed or contract, and which the law would make in default of any other action." p. 597.

⁸ State v. Andrews, 64 Kan. 474, 67 Pac. 870; Cotting v. K. C. Stock Yards Co., 82 Fed. 839.

tity of the bill is clear.⁹ A bill was sometimes referred to as No. 399 and sometimes as No. 339, but always under the same title. The bill with the title in question, when introduced, was numbered 399, and bill No. 339 was previously passed. It was held that the title identified the bill, that all the entries in question related to the same bill, and that it was duly passed.¹⁰ A conference committee agreed upon certain amendments to bill No. 258 S., relating to game, which were reported to the respective houses. The senate duly concurred in the amendments. There was pending in the house, bill No. 258 A., relating to change of county seats. The house journal showed that these amendments, setting them forth at length, were offered to bill No. 258 A., and were adopted, and that bill No. 258 A., giving its proper title, as amended by the conference committee, was read and passed. The court held that it could not presume that the use of 258 A., with its title, was a mistake for 258 S., with a different title, and therefore held that the house journal did not show the passage of the bill.¹¹ The fact that the entries in the journal are confused or inconsistent will

⁹ Attorney-General v. Parsell, 100 Mich. 170, 58 N. W. 839; Nelson v. Haywood County, 91 Tenn. 596, 20 S. W. 1.

¹⁰ Miesen v. Canfield, 64 Minn. 513, 67 N. W. 632. We quote as follows: "It is reasonably clear, if not absolutely certain, that all entries in the journal relating to a bill of this title refer to one and the same bill, and the fact that it was sometimes numbered house file 339 was merely a clerical mistake. The file number is no legal or constitutional part of the title of a bill. It is merely designed for the convenience of the legislative members and clerks. It may therefore be rejected as surplusage, and, if this is done, there is neither defect

nor ambiguity in the legislative journals."

¹¹ State v. Wendler, 94 Wis. 369, 68 N. W. 759. The court says: "We are vehemently urged to hold that the bill referred to as number 258 A. in the assembly journal was number 258 S., and that the use of the wrong letter was simply a palpable clerical error which the court could overlook. It appeared that there was a bill introduced in the assembly and known as 258 A. It was a bill amending the law relating to elections held to consider the change of county seats. This bill is pertinently and correctly described in the assembly journal. It is described by number, and its title is given at length. It is this

not invalidate the act.¹² Where the journals show that an act was vetoed and do not show that it was passed over the veto, it is not a law.¹³

§ 53 (48). **Matters which the constitution expressly requires to be entered in journal.**— If the constitution, however, requires a certain proceeding in the process of legislation to be entered in the journals, the entry is a condition on which the validity of the act will depend. The vital fact that on the final passage of a bill the required number of votes are given in its favor is extensively directed by constitutions to be entered on the journals, together with the names of those voting. Under the operation of these provisions, there is no presumption that the required vote was given if the journal is silent. It must affirmatively appear by the journals that this constitutional requirement has been complied with.¹⁴ Where the journal shows only

bill which the assembly journal says in direct and unmistakable language was read a third time and passed. Can the court say, in face of this positive declaration, that it was another bill which passed? We think not. If it could, then there would be no reliance to be placed on the legislative record. The most that can be said is that it seems very probable that a mistake was made, and that 258 S. was the bill which was acted on. But laws cannot rest on probabilities, even though they be extreme probabilities. If a court can say, 'It is true the legislative record shows that one bill was passed, still it appears to the court that the record is mistaken, and that an entirely different bill was meant, and consequently it shall be enforced as law,' then there is an end of all certainty. The law rests no more upon records, but upon the guess

of a court made long afterwards. This cannot be endured. The official record must govern when its language is clear and free from doubt or ambiguity; and that record shows that bill number 258 S. was never acted on in the assembly after it went to the conference committee." pp. 377, 378.

¹² *Hollingsworth v. Thompson*, 45 La. Ann. 222, 12 So. 1, 40 Am. St. Rep. 220.

¹³ *Trading Stamp Co. v. Memphis*, 101 Tenn. 181, 47 S. W. 136.

¹⁴ *State v. Buckley*, 54 Ala. 599; *State v. Francis*, 26 Kan. 724; *In re Vanderberg*, 28 id. 243; *Weyand v. Stover*, 35 id. 545, 11 Pac. 355; *South Ottawa v. Perkins*, 94 U. S. 260, 24 L. Ed. 154; *People v. Mahaney*, 13 Mich. 481; *Spangler v. Jacoby*, 14 Ill. 297, 58 Am. Dec. 571; *People v. Starne*, 35 Ill. 121; *Ryan v. Lynch*, 68 id. 160; *Post v. Supervisors*, 105 U. S. 667; *Osburn v. Staley*, 5 W.

the names of those voting in the affirmative, the act will be invalid, unless it is also stated that there were no negative

Va. 85; *Bouldin v. Lockhart*, 1 Lea, 195; *State v. Corbett*, 61 Ark. 226, 32 S. W. 686; *People v. Knopf*, 198 Ill. 340, 64 N. E. 1127; *Norman v. Kentucky Board of Managers*, 93 Ky. 537, 20 S. W. 901, 18 L. R. A. 556; *State v. Mason*, 155 Mo. 486, 55 S. W. 636; *Union Bank v. Com'rs*, 119 N. C. 214, 25 S. E. 916, 34 L. R. A. 487; *Rodman v. Washington*, 122 N. C. 39, 30 S. E. 118; *Charlotte v. Shepard*, 122 N. C. 602, 29 S. E. 842; *Wilkes Co. Com'rs v. Call*, 123 N. C. 308, 31 S. E. 481; *Smathers v. Com'rs*, 125 N. C. 480, 34 S. E. 554; *Glenn v. Wray*, 126 N. C. 720, 36 S. E. 167; *New Hannover Co. Com'rs v. Derossat*, 129 N. C. 275, 40 S. E. 43; *Hooker v. Greenville*, 130 N. C. 472, 42 S. E. 141; *Debnam v. Chitty*, 131 N. C. 657, 43 S. E. 3; *State v. Swan*, 7 Wyo. 166, 51 Pac. 209, 75 Am. St. Rep. 889; *Stanley Co. Com'rs v. Coles*, 96 Fed. 284, 37 C. C. A. 484; *State v. Frank*, 60 Neb. 327, 83 N. W. 74; S. C. on rehearing, 61 Neb. 679, 85 N. W. 956; *Ames v. Union Pac. R. R. Co.*, 64 Fed. 165.

Where it appeared upon the journals of the house of representatives that the bill did not receive the requisite vote on its third reading in that body, but did upon its final passage by the house after its return from the senate with amendments, it was held a substantial compliance. *Bond Debt Cases*, 12 S. C. 200.

In *Osburn v. Staley*, 5 W. Va. 85, it appeared that the full senate had consisted of twenty-two mem-

bers; that one afterwards resigned. On the final passage of the bill in question, after such resignation, there were eleven votes in its favor, and it was declared passed and by a majority of the members elected. Held, that there was doubt whether the vote was not sufficient, and the act was sustained by resolving the doubt in favor of its validity.

In *State v. Francis*, 26 Kan. 724, the act in question was passed in the house by a vote in its favor, including, to make the required majority, the votes of four members (who were identified) beyond the maximum membership fixed by the constitution; held void.

Under the Michigan constitution, requiring on the final passage of a bill a majority of all the members elected, it was held that the court would not enter into an inquiry whether *de facto* members were properly elected. *People v. Mahaney*, 13 Mich. 481.

In *Turley v. County of Logan*, 17 Ill. 153, it was said by the court that "while the absence of facts in the journals may rebut the presumption raised by the signatures of the proper officers, and the publication of the act as a law, still we cannot doubt the power of the same legislature, at the same or a subsequent session, to correct its own journals by amendments which show the true facts as they actually occurred, when they are satisfied that by neglect or design the truth has been omitted or suppressed."

votes.¹⁵ Where the journal showed that the act in question was passed by a vote of 64 yeas to 7 nays, but gave the names of only 62 voting in the affirmative, the act was held not impeached, though 63 votes were required for a constitutional majority.¹⁶ As to what is the "final passage of a bill" within the meaning of the constitution, there is a difference of opinion. Some courts hold that the final passage of a bill is when it is first passed in each house, and that concurrence in subsequent amendments made by the other house, or in the report of a conference committee, may be made without a yea and nay vote, and without entering the result in the journals.¹⁷ Other courts hold that it is the last vote in each house which gives efficacy to the bill.¹⁸

In *Miller v. State*,¹⁹ Thurman, C. J., used this emphatic language: "That the power to make laws is vested in the assembly alone, and that no act has any force that was not passed by the number of votes required by the constitution, are nearly or quite self-evident propositions. These essen-

¹⁵ *Smathers v. Com'rs*, 125 N. C. 480, 34 S. E. 554; *New Hannover Co. Com'rs v. Derossat*, 129 N. C. 275, 40 S. E. 43; *Debnam v. Chitty*, 131 N. C. 657, 43 S. E. 3.

¹⁶ *Homzighausen v. Knoche*, 58 Kan. 646, 50 Pac. 879.

¹⁷ *State v. Corbett*, 61 Ark. 226, 32 S. W. 686; *Brake v. Collison*, 122 Fed. 722; *Hull v. Miller*, 4 Neb. 503.

¹⁸ *Norman v. Ky. Board of Managers*, 98 Ky. 537, 20 S. W. 901, 18 L. R. A. 556. The court says: "It is true it has been held that the 'final passage' of a bill means when it first passes the body, and not when it returns to it, after amendment, for adoption; and it is said that the constitutional provision as to the number of votes, and the entry of the yea and nay vote on the

journal, does not apply to amendments or the report of conference committees. If so, then no matter how material the change, a majority vote of a quorum may pass the bill. The words 'final passage,' as used in our constitution, mean final passage. They do not mean some passage before the final one, but the last one. They do not mean the passage of a part of a bill, or what is first introduced, and which may by reason of amendments become the least important. If so, then the body may pass what is practically a new bill in a manner counter to both the letter and spirit of the constitution." pp. 544, 545.

¹⁹ 3 Ohio St. 475

tials relate to the authority by which, rather than to the mode in which, laws are to be made."

§ 54 (49). **Required reading, printing and reference of bills.**—The readings required of bills are intended to afford opportunities for deliberate consideration of them in detail, and for amendment.²⁰ Hence, amendments are admissible during the progress of a bill through the process of enactment; they are not subject to the same rule as bills in regard to the number of readings. They must be germane to the subject of the bill, and are not required to be read three times.²¹ And this rule is held to apply though the amendment consists in the substitution of a new bill on the same subject.²² Nor does concurrence by one house in amendments made by the other require the yeas and nays, and their entry on the journal, under the provision for these things on the final passage of bills.²³

It is not necessary that everything which is to become law by the adoption of a bill be read. Thus a bill may be passed for the adoption of the common law, and it would not be necessary to set it forth in the bill. And where a bill was passed adopting a revised code, prepared by a commission, it was held unnecessary to read the code referred to and adopted.²⁴ An act was held valid which provided for the punishment as at common law of misdemeanors for which no punishment was provided by statute.²⁵

The requirement that bills be read on different days will

²⁰ *State v. Platt*, 2 S. C. 150, 16 Am. Rep. 647.

²¹ *Miller v. State*, 8 Ohio St. 475; *People v. Wallace*, 70 Ill. 680; *State v. Platt*, 2 S. C. 150, 16 Am. Rep. 647; *Illinois Central R. R. Co. v. People*, 143 Ill. 434, 83 N. E. 173, 19 L. R. A. 119; *Gilliland v. Baptist Church*, 88 S. C. 164, 11 S. E. 684; *State v. Hooker*, 86 Fla. 358, 18 So. 767. In *Glenn v. Wray*, 126 N. C. 730, 36 S. E. 167, it is held that if the amendment is material it must

be read the prescribed number of times.

²² *Nelson v. Haywood County*, 91 Tenn. 596, 20 S. W. 1; *Cantini v. Tillman*, 54 Fed. 969; *Brake v. Collision*, 122 Fed. 722.

²³ *Hull v. Miller*, 4 Neb. 503; *ante*, § 52, note 98.

²⁴ *Central of Georgia R. R. Co. v. State*, 104 Ga. 831, 31 S. E. 531, 42 L. R. A. 518.

²⁵ *Dew v. Cunningham*, 28 Ala. 471, 65 Am. Dec. 362; *Dane v. Mc-*

not prevent one house from reading a bill the first time on the same day it was read the third time and passed in the other house.²⁵ Nor is it any objection that one of the readings was on the day of final adjournment.²⁷ Where a bill is vetoed and reconsidered it may be passed at once, and is not required to go through the prescribed readings as if an original bill.²⁸ Of course if the journals show that the act was not read as required, it will be void.²⁹

The constitution of Colorado provides that "no bill shall be considered or become a law unless referred to a committee, returned therefrom, and printed for the use of the members."³⁰ It has been held that this does not require a bill to be printed before it is read.³¹ The same constitution provides that all substantial amendments shall be printed for the use of the members before the final vote is taken on the bill. It is held that this provision is mandatory; that whether an amendment is substantial is a question for the courts, and if the provision is not complied with the act is void.³²

§ 55 (50). What shall be sufficient cause for suspending the rule requiring the readings on different days is solely

Arthur, 57 Ala. 454; *People v. Whipple*, 47 Cal. 592; *Bibb County Loan Ass'n v. Richards*, 21 Ga. 592.

²⁵ *Chicot Co. v. Davies*, 40 Ark. 200; *State v. Crawford*, 35 id. 287.

²⁷ *Gilliland v. Baptist Church*, 88 S. C. 164, 11 S. E. 684.

²⁸ *Lake v. Ocean City*, 62 N. J. L. 160, 41 Atl. 427. In *People v. Luby*, 99 Mich. 89, 57 N. W. 1092, it was held that an objection that an act was not read in full on the first and second readings would not be considered when made for the first time on appeal.

²⁹ *Ante*, § 52, note 98; *Stanley Co. Com'rs v. Snuggs*, 121 N. C. 394, 28 S. E. 539, 39 L. R. A. 439; *Charlotte v. Shepard*, 122 N. C. 602, 29 S. E. 842; *Wilkes Co. Com'rs v. Call*, 123

N. C. 808, 31 S. E. 481; *Smathers v. Commissioners*, 125 N. C. 480, 34 S. E. 554; *Hooker v. Greenville*, 130 N. C. 472, 42 S. E. 141. Where a city charter required every ordinance to be read three several times before it became a law, adopting the language of the constitution, and the practical construction of the constitution by the legislature had been that one of the readings might be by title, it was held that the charter was intended to have the same construction. *State v. Camden*, 58 N. J. L. 515, 38 Atl. 846.

³⁰ Art. 5, sec. 20.

³¹ *Mass. Mut. Life Ins. Co. v. Col. L. & T. Co.*, 20 Colo. 1, 36 Pac. 793.

³² *In re House Bill 250*, 26 Colo. 234, 57 Pac. 49.

within the discretion of the legislative body voting it, where power to dispense with it is given, and such cause need not appear upon the journals.³³ The house may, by one order or resolution, dispense with the rule for two or more bills.³⁴ It is not for the courts to say how the power shall be exercised.

The requirement that there be three readings and that they occur on three different days, being intended to prevent hasty and imprudent legislation, ought on principle to be, and by the weight of authority is, regarded as mandatory.³⁵ In Ohio it seems to be regarded as directory.³⁶

§ 56 (51). *Necessity of signature of presiding officers.*—Where the constitution requires every bill passed to be signed by the presiding officers of the respective houses, it is mandatory, and cannot be dispensed with where the journals are not records, and the act when passed and duly authenticated is conclusive as a record.³⁷ Where the fact of signing is required to be entered on the journals, the provision is held to be mandatory by some courts,³⁸ and directory by others.³⁹ Where the constitution provides for a speaker *pro tem.*, he may sign bills.⁴⁰ If the constitution does not require their signing, it is not deemed essential.⁴¹ And since it is no part of the essential process of legislation, and is designed solely to verify the passage of the bill or resolution, where the legislative journals and files are records of which the court takes judicial notice, or which may

³³ Hull v. Miller, 4 Neb. 503.

³⁴ People v. County of Glenn, 100 Cal. 419, 35 Pac. 302, 38 Am. St. Rep. 305.

³⁵ Ante, § 49; Cooley, Const. L. 170.

³⁶ Miller v. State, 8 Ohio St. 481; Pim v. Nicholson, 6 id. 178.

³⁷ State v. Howell, 26 Nev. 93, 64 Pac. 466. See Wrought Iron Range Co. v. Carver, 118 N. C. 328, 24 S. E. 852.

³⁸ People v. Commissioners, 54 N. Y. 276; Pacific R. R. Co. v. The

Governor, 23 Mo. 364; Cooley's Const. Lim. 158; Burrough, Pub. Securities, 425. And see O'Hara v. State, 121 Ala. 28, 25 So. 622, where the question was whether the journal could be construed as showing the signing of the bill in question.

³⁹ In re Roberts, 5 Colo. 525; State v. Long, 21 Mont. 26, 52 Pac. 645.

⁴⁰ Robertson v. State, 130 Ala. 164, 80 So. 494.

⁴¹ Speer v. Plank Road Co., 22 Pa. St. 376.

be brought to judicial notice, and from them it plainly appears that the bill or resolution, not signed by one or both of the presiding officers, was regularly considered and passed, there is much reason to sustain it as valid notwithstanding the absence of those signatures. If that evidence will prevail to avoid a statute erroneously signed by them, it should suffice to sustain one which was duly passed, though lacking that particular verification, if the other record evidence sufficiently shows the essential proceedings.⁴² The signature of the presiding officer is in such cases only a certificate to the governor that the bill or resolution has passed the requisite number of readings, and been adopted by the constitutional majority of the house over which he presides. But where the vote must be determined by the journals, the absence of the signatures of the presiding officers is not fatal, if the governor has signed the bill, for it will be presumed that the governor had sufficient evidence, the assurance which the journals afford to the court, of its passage at the time of his approval.

§ 57 (52). **How the question of the due passage or enactment of statutes is tried.**—The court takes judicial notice of all general laws. This is a cardinal rule, and necessarily includes cognizance of whatever must be considered in determining what the law is; not because it is the prerogative of the courts arbitrarily to determine what are the public statutes, nor because they are required or supposed to have a knowledge of those laws without evidence of them, but because they have the means, and it is their duty, to make themselves acquainted with them.⁴³ Whatever extrinsic facts are proper to be considered, the courts may have recourse to aid them in their duty to ascertain the law. Judicial knowledge takes in its whole range and scope at once; it embraces simultaneously, in contemplation of

⁴² *Hull v. Miller*, 4 Neb. 508; *Cotton, etc. R. R. Co. v. Odum*, 53 Tex. 843.
⁴³ *Eld v. Gorham*, 20 Conn. 8.
trell v. State, 9 Neb. 128; *Commissioners v. Higginbotham*, 17 Kan. 75; *State v. Glenn*, 18 Nev. 89; *Hous-*

law, all the facts to which it extends. It would be a solecism to hold that a statute regularly authenticated is *prima facie* valid, if there exists facts of which the court must take judicial notice showing it to be void.

On principle and the weight of authority the courts take judicial notice of the legislative journals. If they invalidate a statute it is not apparently valid, for in every view of it the court perceives what impugns it and prevents it having force. And if the court has other sources of information which explored disclose facts fatal to an act, it is void from the beginning, void on its face; for what is manifest to the judicial mind is legally palpable to the whole public. None can plead ignorance of it. It is, however, held in some of the states that the courts do not take such judicial notice of legislative journals and extrinsic facts. In *Grob v. Cushman*,⁴⁴ the court says: "It is true that they are public records, but it does not follow that they are to be regarded as within the knowledge of the courts like public laws. Like other records and public documents they should be brought before the court as evidence. But when offered they prove their own authenticity. Until so produced they cannot be regarded by the courts." It is held in that state not to be the province of the court, at the suggestion or request of counsel, to explore the journals for the purpose of ascertaining the manner in which a law duly certified went through the legislature and into the hands of the governor.⁴⁵

§ 58 (53). These cases came under review in the supreme court of the United States in *Town of South Ottawa v. Perkins*,⁴⁶ and that court was in doubt and divided on the question whether by the state decision the validity of a statute was a conclusion of law or fact, when the statute, properly authenticated, is avoided by the legislative journals showing it was not constitutionally enacted. The majority,

⁴⁴ 45 Ill. 124, 125; *Illinois Central R. R. Co. v. Wren*, 43 Ill. 77; *Larison v. Peoria, etc. R. R. Co.*, 77 id. 18; *People v. De Wolf*, 62 Ill. 253.

⁴⁵ *Illinois Central R. R. Co. v. Wren*, 43 Ill. 77; *Cantrell v. Seaverns*, 168 Ill. 165, 48 N. E. 186.
⁴⁶ 94 U. S. 260, 24 L. Ed. 154.

by Bradley, J., say: "In our judgment it was not necessary to have raised an issue on the subject, except by demurrer to the declaration. The court is bound to know the law without taking the advice of a jury on the subject. When once it became a settled construction of the constitution of Illinois that no act can be deemed a valid law unless by the journals of the legislature it appears to have been regularly passed by both houses, it became the duty of the courts to take judicial notice of the journal entries in that regard. The courts of Illinois may decline to take that trouble, unless the parties bring the matter to their attention, but on general principles the question as to the existence of a law is a judicial one, and must be so regarded by the courts of the United States."⁴⁷

In a recent case the supreme court of the United States says: "As a statute duly certified is presumed to have been duly passed until the contrary appears (a presumption arising in favor of the law as printed by authority, and, in a higher degree, of the original on file in the proper repository), it would seem to follow that wherever a suit comes to issue, whether in the court below or in the higher tribunal, an objection resting on the failure of the legislature to comply with the provisions of the constitution should be so presented that the adverse party may have opportunity to controvert the allegations and to prove by the record due conformity with the constitutional requirements."⁴⁸ It is also said in the same case that "it has often been held by state courts that evidence of the contents of legislative journals, which has not been produced and made part of the case in the court below, will not be considered on appeal."⁴⁹

⁴⁷ *Post v. Supervisors*, 105 U. S. 467. ⁴⁸ Ill. 77; *Bedard v. Hall*, 44 Ill. 91; *Greb v. Cushman*, 45 Ill. 119; *Hinsoldt v. Petersburg*, 63 Ill. 157; *Auditor v. Haycraft*, 14 Bush, 284; *Bradley v. West*, 60 Mo. 83. In *State v. Brown*, 33 S. C. 151, 11 S. E. 641, the supreme court refused to consider the journals because they

⁴⁸ *In re Duncan*, 139 U. S. 449, 457, 458, 11 S. C. Rep. 573, 35 L. Ed. 219; and see *State v. Wray*, 109 Mo. 594, 19 S. W. 86.

⁴⁹ Citing the following cases: *Illinois Central R. R. Co. v. Wren*,

But the general rule undoubtedly is that the courts of every grade will take judicial notice of the journals and of the enrolled act and indorsements thereon.⁵⁰ Whether an appellate court will consider an objection to the manner of passing a statute, not made in the lower court, is another question.

§ 39 (54). The investigation upon an objection that an act was unconstitutionally passed may be expected to be made primarily by the parties; they will desire to be heard in respect to the source and the evidentiary quality of information obtained, and the effect of facts considered. Doubtless this interest of the parties, and a conservatism of the courts restraining them from a consideration of any important ingredient of a case without notice to the parties, and the aid of their counsel, have induced the course of decision in Illinois and in some other states in which it is held that the courts will not take judicial notice of the legislative journals, though they are required by the constitution to be kept, and will be considered only when brought before the court as evidence.⁵¹ It has been intimated in some cases that the objection should be made by plea,⁵²

were not offered in evidence below. In *People v. Luby*, 99 Mich. 89, 57 N. W. 1092, the court says it will not consider an objection to the manner of passing an act, when it is made for the first time on appeal.

⁵⁰ *Henderson v. State*, 94 Ala. 95, 10 S. E. 332; *Davis v. Whidden*, 117 Cal. 618, 49 Pac. 766; *State v. Hocker*, 36 Fla. 358, 18 So. 767; *Homzighausen v. Knoche*, 58 Kan. 646, 50 Pac. 870; *Barnard v. Gall*, 43 La. Ann. 959, 10 So. 5; *State v. Smith*, 44 Ohio St. 348, 7 N. E. 447; *State v. Price*, 8 Ohio C. C. 25; *State v. Rogers*, 22 Ore. 348, 30 Pac. 74; *McDonald v. State*, 80 Wis. 407, 50 N. W. 185; *In re Ryan*, 80 Wis. 414, 50 N. W. 187; *Milwaukee*

County v. Isenring, 109 Wis. 9, 85 N. W. 131, 58 L. R. A. 635. In the last case the court says: "It must be understood that when the existence or contents of a statute are called in question, no issue of fact is presented for a trial upon the evidence, but the court, whether one of original or appellate jurisdiction, must necessarily decide the question the same as it decides any other question of law."

⁵¹ *Burt v. Winona, etc. R. R. Co.*, 31 Minn. 472, 4 Am. & Eng. Corp. Cas. 426, 18 N. W. 285, 289; *Ballou v. Black*, 17 Neb. 389, 23 N. W. 3.

⁵² *People v. Supervisors*, 8 N. Y. 317; *Falconer v. Campbell*, 2 Mo. Lean, 195, Fed. Cas. No. 4620.

which implies that the validity may be made to depend on the determination of an issue of fact. But this notion has been abandoned in the court in which it originated, and never obtained a footing in any other jurisdiction.⁵³ The court is required to take notice *ex officio* of general laws; its peculiar function is to determine what the law is, and expound it; therefore it would be at once absurd and inconvenient to submit such a question to a jury. It is more logical and more consistent with principle to treat the evidence, so called, produced upon such an objection as being presented for the information of the court in the same sense in which law-books are read; facts are only incidental to the research, as when a court must deal with them to some extent, to learn if authorities cited are authentic. In *Gardner v. The Collector*,⁵⁴ Miller, J., said of the public statute in question: "It is one of which the court takes judicial notice, without proof, and therefore the use of the words 'extrinsic evidence' is inappropriate. Such statutes are not proved as issues of fact as private statutes are."

§ 60 (55). **Approval by executive.**—The legislative power is generally in terms vested by the organic law in the legislature or general assembly consisting of two branches; though in acts of congress organizing territorial governments it has been usual to vest it in the governor and general assembly. He is thus made a constituent of the legislature, as the king in the English system is a constituent of parliament. The legislative practice, however, is the same in the territories as in the states, and the same as in parliament, as to the part taken by the executive in the enactment of laws. The two houses formulate and adopt in the first instance all legislative measures, and the executive acts merely to approve or disapprove these measures. His function is of the same nature as that of members of the two houses, except that it is negative, and that by pursuing the

⁵³ *People v. Devlin*, 38 N. Y. 269, *missioners*, 54 N. Y. 276; *State ex 88 Am. Dec. 877*; *People v. Com- rel. v. Foote*, 11 Wis. 11.

⁵⁴ 6 Wall. 508, 18 L. Ed. 890.

course prescribed in the paramount law acts may acquire the force of laws without his concurrence.⁵⁵

In New York it is held that after the final adjournment

⁵⁵ In *People v. Bowen*, 21 N. Y. 520 et seq. (S. C., 80 Barb. 24), Denio, J., thus discusses the nature of the duty and power of the executive in the enactment of laws: "The question as to the nature of the governor's agency raises, I think, rather a dispute about terms than one concerning the substance of things. Whatever the authority touching the enactment of laws, with which the governor is clothed, shall be called, it is of the same general nature with that which is exercised by the members of the two houses. He is to consider as to the constitutionality, justice and public expediency of such legislative measures as shall have been agreed upon by the two houses, by the ordinary majorities, and be presented to him; and he is to accord or withhold his approbation according to the result of his deliberations. This is plainly the function of a legislator. The sovereign of England, who is charged with the same duty in respect to acts of parliament, is considered to be a constituent part of the supreme legislative power. 1 Bl. Com. 261. It is true that his determination to disapprove a bill deprives it of any effect, while one disallowed by the governor may yet be established by an extraordinary concurrence of votes in the houses. Thus, though the action of the executive is less potential here than in England, the quality of the act, namely, deliberating and

determining upon the propriety of laws proposed to be enacted, is precisely the same. Besides making his determination the governor is required, in case it is unfavorable to the law, to submit his objections to the legislature which is to examine them, and again pass upon them in the light of the discussion which they have thus undergone. To my mind it is clear that this involves a participation on the part of the governor with the two houses of the legislature in the enactment of laws. It would not be correct language to say that he forms a branch of the legislature, for the constitution has limited that designation to the senate and assembly; but it would be equally incorrect to affirm that the sanction which he is required to give to or withhold from bills before they can become operative does not render him a participator in the function of making laws. The forty-seventh number of 'The Federalist,' written by Mr. Madison, treats of the separation of the great departments of the government, and it is there shown that the concurrence of the executive magistrate with the proper legislature in the enactment of laws as arranged in the constitution of the United States is not, in spirit, a violation of the principle, so strongly insisted upon by Montesquieu and other writers upon constitutional government, that constitutional liberty cannot exist where the leg-

of the legislature the governor may act upon bills submitted to him.⁵⁶ Such seems to have been the practice sanctioned by judicial decision under similar constitutional provisions

islative and executive powers are united in the same person. Mr. Madison considers the qualified veto accorded to the president as effecting a partial distribution of the legislative authority between him and the congress, but argues that it is not objectionable, because neither authority can, in any case, exercise the whole power of the other. He shows, also, that in certain states, in the constitutions of which the principle of Montesquieu is laid down in terms with great positiveness, there is an intermingling of the legislative and executive departments in the actual arrangement of the details of government. Our own constitution furnishes another example; for though it is declared that the whole legislative authority shall be vested in the senate and assembly, still no law can be enacted which has not been submitted to the judgment of the governor. His agency cannot, therefore, be considered as merely a power to refer back bills for further consideration by the legislature. His approval is regarded as generally essential to the enactment of laws, though his disapproval is not necessarily fatal to them, but may be overcome, where the legislature, upon a consideration of his objections, shall repass them by an extraordinary majority."

⁵⁶ *People v. Bowen*, 21 N. Y. 520. Denio, J., continuing the opinion from which we quoted in the last

note, said that, in his opinion, "it is not a just construction of the power intrusted to the governor to consider it as merely an authority to require a further consideration of bills which he shall disapprove. In one respect the effect of the governor's determination is different when the legislature is in session and when it is not. In the latter case, if he approves, the concurrence of the whole law-making power is secured, precisely as though the legislature was in session. The bill has received the concurrence of all the functionaries which the constitution requires shall unite in enacting a perfect law. He cannot state objections, for there is no public body in existence to whom they can be submitted. If he neglect to act, which he will of course do if the bill is disapproved of by him, it falls to the ground by the express provisions of the constitution, for the grounds of his disapproval cannot be passed upon by the legislature. But if the proposed law meets with his approval, there is no reason why the public will, expressed by all the official bodies and persons with whom the constitution has intrusted the province of making laws, should fail of effect.

"It has been argued that, as the governor cannot, in the recess of the legislature, compel the reconsideration of bills to which he is unwilling to yield his consent, he

in Georgia,⁵⁷ Illinois,⁵⁸ Louisiana,⁵⁹ Maryland,⁶⁰ Michigan,⁶¹ and Mississippi.⁶² It is held that the president may approve a bill during a recess of congress.⁶³

A bill was signed by the presiding officers and approved by the governor on the second page of the bill, at the end of section 2 instead of at the end of the bill. The governor, on discovering this, erased the signatures and sent the bill to be re-signed by the presiding officers, intending to sign after them. The bill was again signed by the presiding officers, but, in the confusion attending the close of the session, the governor neglected to do so, and the bill was filed with the secretary of state without being again signed by the governor. In a message to the senate, where the bill originated, the governor announced that he had approved of the bill. It was held that it was immaterial where on the bill the signatures were placed, that the bill became a law when approved, and that the subsequent acts did not annul it.⁶⁴

might be induced to approve those which are, in some respects, objectionable, but which contain other provisions important to the public welfare. This argument is not without force, but I think it should be assumed that he would never interpose a veto to a bill which he did not conscientiously believe ought not to become a law, and that he would never approve one to which such objection, in his opinion, existed. Should a bill of the character suggested be left in his hands at the adjournment, the remedy for the public inconvenience, which might be occasioned by the failure to enact the sound parts, would be found in the power to again call the legislature together, which is vested in him for this and the like occasions."

⁵⁷ *Solomon v. Commissioners*, 41 Ga. 157.

⁵⁸ Const. 1848, art. 4, § 21; *Seven Hickory v. Ellery*, 103 U. S. 423, 26 L. Ed. 435.

⁵⁹ *State v. Fagan*, 22 La. Ann. 545.

⁶⁰ *Lankford v. County Com'rs*, 73 Md. 105, 20 Atl. 1017, 11 L. R. A. 491.

⁶¹ *Detroit v. Chapin*, 108 Mich. 136, 66 N. W. 587, 37 L. R. A. 391.

⁶² *State v. Supervisors*, 64 Miss. 365. *Contra*, *Fowler v. Pierce*, 2 Cal. 165.

⁶³ *La Arba Silver Min. Co. v. United States*, 175 U. S. 423, 20 S. C. Rep. 168, 44 L. Ed. 223.

⁶⁴ *National Land & Loan Co. v. Mead*, 60 Vt. 257, 14 Atl. 689. The court says: "The bill passed both the senate and the house, was presented to the governor, was carefully examined by him, and was by him approved and signed intentionally and under-

In another case the governor approved a bill and left his office for lunch. During his absence his private secretary filed it with the secretary of state. The private secretary was accustomed so to file approved bills without any special direction so to do. On the governor's return he obtained the bill, erased his signature and returned it with his objections to the senate, where it originated. The bill bore this indorsement: "Returned to the senate by the governor and signature refused. Failed of a passage over his veto." In a proceeding for a *mandamus* to compel the secretary of state to restore the bill to its place among the public laws of the state, the court held that the question must be tried by the bill and veto message alone, that these could not be contradicted by parol, and that they showed that the act did not become a law.⁶⁵

The constitution of Minnesota provides that "the governor may approve, sign and file in the office of the secretary of state, within three days after the adjournment of the legislature, any act passed during the last three days of the session, and the same shall become a law."⁶⁶ The "last three days" is held to mean working days and to exclude Sunday.⁶⁷ It is also held that the word "passed" refers to the enrollment of the act and not to the final vote upon it;

standingly. The bill thereby became a law. That which took place afterwards did not annul this enactment. It was not even so intended if the power existed. The governor did not attempt to withdraw his approval. The place of signing was as effectual as though it had been at the end of the bill, the fact appearing that it was intended as a signing and approval of the entire bill. The constitution does not require that a bill shall be signed at the end, or subscribed." p. 260.

The facts in this case were

brought to the attention of the court by an affidavit of the governor.

⁶⁵ *Weeks v. Smith*, 81 Me. 538, 18 Atl. 293. The court says that the governor may recall his approval of a bill while it remains in his custody, and that if it gets to the secretary of state without his authority it is not such a deposit as makes it a law.

⁶⁶ Art. 4, sec. 11.

⁶⁷ *Stinson v. Smith*, 8 Minn. 366; *John V. Farwell Co. v. Matheis*, 48 Fed. 363.

and where an act passed the house on April 19, was reported enrolled and presented to the governor on April 22, and the legislature adjourned on April 23, it was held to have been passed within the last three days of the session within the meaning of the constitution, and the approval by the governor on April 24 made it a law.⁶⁸

§ 61 (56). The organic act of Nevada territory vested the legislative power in the governor and legislative assembly. It was therefore held that, being a part of the legislative body, he could only concur in the passage of a law whilst the other branches had a legal existence.⁶⁹ The signing of a bill by the governor is the mode appointed in the constitutions for him to signify his approval. When he has signed it it will become a law though he send a message to the legislature or the house in which it originated, setting forth objections to it.⁷⁰ So it has been held that after a bill has been regularly passed by the two houses, and has been presented to the governor for approval, it cannot be recalled by their joint resolution.⁷¹ The schedule of the Kansas constitution provides that all officers under the territorial government shall continue in the exercise of the duties of their respective departments until superseded under the authority of the constitution. Under this provision it was held that the territorial governor properly approved an act after the act of admission had passed.⁷²

§ 62 (57). How a bill will become a law without approval.—Without the express approval of the executive a bill passed by the legislature can become a law only in two cases. First, when he fails to return it with his objections within the time prescribed by the constitution; second, when

⁶⁸ *Burns v. Sewell*, 48 Minn. 425, 51 N. W. 224. It was also held that the provision quoted was not a grant of power to approve a bill after the adjournment of the legislature, but a limitation of the power.

⁶⁹ *School Trustees v. Commissioners*, 1 Nev. 335; *Birdsall v. Carrick*, 3 Nev. 154.

⁷⁰ *State v. Whisner*, 35 Kan. 271, 10 Pac. 852.

⁷¹ *Wolfe v. McCaull*, 76 Va. 876.

⁷² *State v. Hitchcock*, 1 Kan. 186.

it is passed over his objections by the required vote.⁷³ Many constitutions provide that an act shall become a law without the governor's signature if he retain it for a certain number of days after it is presented to him for approval,⁷⁴ unless the adjournment of the legislature shall prevent him from returning it within that time, and in that case that it shall not become a law. The adjournment intended by this provision is the final adjournment, not adjournments from time to time.⁷⁵ Where Sundays are excepted in the specification of the period; and under the provision sometimes added, that "the governor may approve, sign and file in the office of the secretary of state within three days after the adjournment of the legislature, any act passed during the last three days of the session, and the same shall become a law," Sundays will be excepted by construction, as intended by the constitution, in order to give the governor three full working days after the adjournment. Such time being expressly granted in the limitation of time during the session, it is deemed not unreasonable to hold that there is implied the same exception of Sundays in the period given after the adjournment, for there is the same and stronger reason for it in the greater number of important bills usually passed during the last days of a session.⁷⁶ Whether Sunday is to be included or excluded in computing the time allowed the executive for the return of bills would seem to depend upon the general principles for making such computations, which are discussed elsewhere.⁷⁷ Where the time allowed was five days, it was held that Sunday should be excluded, and the general rule was laid down that when the time limited exceeds one week, Sunday is to be included, but when it is a week or less, Sunday is to be excluded.⁷⁸

⁷³ *Birdsall v. Carrick*, 3 Nev. 154.

⁷⁴ *McNeil v. Commonwealth*, 12 Bush, 727.

⁷⁵ *Miller v. Hurford*, 11 Neb. 377, 9 N. W. 477; *State v. Michel*, 52 La. Ann. 936, 27 So. 565, 78 Am. St. Rep. 364.

⁷⁶ *Stinson v. Smith*, 8 Minn. 366;

John V. Farwell Co. v. Matheis, 48 Fed. 363.

⁷⁷ *Post*, ch. V.

⁷⁸ *State v. Michel*, 52 La. Ann. 936, 27 So. 565, 78 Am. St. Rep. 364.

But where the provision was that if the return of a bill was prevented by adjournment, the bill should become a law unless the governor filed his objections thereto with the secretary of state within ten days after the adjournment, it was held that Sunday was excluded.⁷⁹

§ 63 (58). This provision is made in Iowa for bills passed during the last three days of a session: that they "shall be deposited by him [the governor] in the office of the secretary of state within thirty days after the adjournment, with his approval, if approved by him, and with his objections, if he disapproves thereof." In a case in which the bill was presented to the governor during the last three days of the session, and he omitted to sign it, but within the thirty days filed it without objections with the secretary of state, it was held that it did not become a law — it could only become a law by his subsequent approval of it.⁸⁰

§ 64 (59). Presentation to executive — Veto. — A constitutional provision requiring a bill to be presented to the governor on the day of its passage and requiring the fact of presentation to be noted in the journal was held to be directory.⁸¹ Where a bill is tendered to the governor by the proper officer there is a presentation within the meaning of the constitution, though the governor declines to receive it and does not receive it until the next day.⁸² A private incorporation act was presented to the governor for his approval. He indicated to the member who introduced it some objections to the bill, whereupon this member obtained leave from the house to withdraw the bill from the governor's hands, which was done. The bill then remained in the control of the promoters of the company for more than a year, when it was presented to the secretary of state with a request that he include it among the enrolled bills, on the ground that it had become a law by failure of the

⁷⁹ *People v. Rose*, 167 Ill. 147, 47 N. E. 547.

⁸⁰ *Darling v. Boesch*, 67 Iowa, 702, 25 N. W. 887.

⁸¹ *State v. Mason*, 155 Mo. 486, 55 S. W. 636; *State v. Mead*, 71 Mo. 266.

⁸² *State v. Michel*, 52 La. Ann. 936, 27 So. 565, 78 Am. St. Rep. 364.

governor to return it within ten days. On *mandamus* to compel the secretary of state to comply with the request, it was held that the bill had never been presented within the meaning of the constitution.⁸³

When a bill has been presented to the executive for his approval his responsibility commences, and the time specified in the constitution for his action is important and mandatory, for precise consequences of his action or non-action are defined. It must be presented to him during the session of the legislature, and he can only return it with objections when the body is in session to which the return must be made. If the session is ended or interrupted by adjournment; if the members have dispersed, and the officers are not in attendance, he cannot return it to the house in which

⁸³ *McKinzie v. Moore*, 92 Ky. 216, 17 S. W. 483, 14 L. R. A. 251. The court says: "The object in presenting a bill to the executive is to enable him to consider its various features that he may understandingly approve or reject it. He must have time to consider its provisions, and with the courtesy extended members of the legislature by the executive of the state, that has grown into a custom, in permitting them to withdraw bills before mature consideration by him that appear to be objectionable, it would be a singular rule to adopt, and one productive of much evil, to permit a member, however honest his motives, to withdraw a bill from the consideration of the executive, that the member himself has introduced, and after the lapse of months, with the legislature adjourned, to declare the bill a law because it was once in the governor's hands. It is no such presentation as is contemplated by the constitution for the member, or the

custodian of the bill, to deliver it to the governor, then immediately withdraw it and claim that it becomes a law, because the governor failed to return it within the ten days." p. 221.

An indorsement on a bill by the secretary of the senate that it was presented to the governor March 31 was held to be overcome by an indorsement on the same bill by the secretary of state that it was presented on April 4. *Lankford v. County Com'rs*, 73 Md. 105, 20 Atl. 1017, 11 L. R. A. 491.

In the Texas constitution the governor must act on every bill presented to him one day previous to the adjournment of the legislature before the adjournment; otherwise it will become a law without his approval; and under it it is held that the governor must have the bill at least twenty-four hours before the adjournment. *Hyde v. White*, 24 Tex. 137; Const. 1845, art. 5, § 17; Const. 1868, art. 4, § 25; Const. 1866, art. 5, § 17.

it originated. He is not authorized to return a bill to the speaker of the house, to the clerk, or to any other officer, but only to the house in which it originated, and that can only be as a body.⁸⁴ The return of a bill by laying it on the speaker's table and the announcement of a message from the governor, before the adjournment of the house, is a sufficient return of it, though the house was at the time taking a vote by ayes and noes on a motion to adjourn, which was carried.⁸⁵ Though the constitution requires a larger majority to pass certain bills than is required to pass a bill over the governor's veto, such bills must nevertheless be presented to the governor, and can become laws only in the usual way, and if he vetoes such a bill it must be passed

⁸⁴ *People v. Hatch*, 33 Ill. 9, 135.

⁸⁵ *Opinion of Justices*, 45 N. H. 608.

As to what shall be regarded as a return, and what should be considered as a day in this connection, the justices in this opinion say: "Nor are we by any means prepared to say that the legislative day was ended necessarily by the adjournment of the house, even though it might have been at the usual hour in the afternoon; or that the return of the bill at any convenient time during the day to the speaker, although after the house adjourned for the day, would not have been sufficient. The provision of the constitution in relation to this subject should receive a reasonable construction; and it can hardly be supposed that the time limited for the return of the bill has expired because that branch of the legislature in which the bill originated has adjourned for the day, if the five days limited by the constitution have not expired. The word "day," in its common acceptance,

means a civil day of twenty-four hours, beginning and ending at midnight." *Shaw v. Dodge*, 5 N. H. 465; *Colby v. Knapp*, 18 id. 175. This opinion answers the question whether the bill was properly presented to the governor. It was left in the executive office in the governor's absence, and it came to his notice on the following day. It is supposed that custom and habit have designated where the executive business is done; and leaving the bill there on the governor's table, even in his absence, is a presentation. The justices say as to personal presentation elsewhere: "It would be absurd to hold that the officers of the senate and house of representatives are obliged, in order to perform their duty, to follow the governor wherever he may chance to go, whether in the state or out of it, upon his private business as well as public, and present it to him in person wherever he may happen to be."

over his veto, or fail.⁸⁶ The constitution of Kentucky provides that an act shall not take effect until ninety days after the adjournment of the session, "except in cases of emergency, when by the concurrence of a majority of the members elected to each house of the general assembly, by a yea and nay vote entered in their journals, an act may become a law *when approved by the governor*." It is held that an act with an emergency clause passed over the governor's veto takes effect immediately.⁸⁷ In the absence of express provision to the contrary, a bill must be approved or rejected as a whole, and cannot be approved in part and vetoed in part, and such action is held to be a nullity.⁸⁸ An exception is sometimes made in case of appropriation bills, and under power to approve part and disapprove part of such a bill, a single item may be approved as to part and disapproved as to the remainder.⁸⁹

The computation of the time for different purposes, both for executive action on bills presented for approval and in determining when acts take effect, is a subject of considerable interest. The discussion of it will be deferred until the latter topic is reached.⁹⁰

§ 65. Extra sessions.—Extra or special sessions of the legislature are usually provided for in the constitution, and in such cases the legislature is also usually limited to the transaction of such business as is mentioned in the call. Where this limitation exists, legislation relating to other subjects will be void.⁹¹ In order to determine this question the courts will take judicial notice of the governor's procla-

⁸⁶ *State v. Crounse*, 36 Neb. 835, 55 N. W. 246.

⁸⁷ *Sinking Fund Com'rs v. George*, 104 Ky. 260, 47 S. W. 779, 84 Am. St. Rep. 454.

⁸⁸ *State v. Holder*, 76 Miss. 158, 23 So. 643.

⁸⁹ *Commonwealth v. Barnett*, 199 Pa. St. 161, 48 Atl. 976; *State v. Holder*, 76 Miss. 158, 23 So. 643. See *State*

v. Cheetham, 17 Wash. 483, 49 Pac. 1072.

⁹⁰ *Post*, ch. V.

⁹¹ *Davidson v. Moorman*, 2 Heisk. 575; *Jones v. Theall*, 3 Nev. 233. See *Speed v. Crawford*, 3 Met. (Ky.) 207; *People v. Curry*, 130 Cal. 82, 62 Pac. 516; *Wells v. Mo. Pac. Ry. Co.*, 110 Mo. 286, 19 S. W. 530, 15 L. R. A. 847.

mation.⁹² The legislature may act freely within the call;⁹³ may legislate upon all or any of the subjects specified, or upon any part of a subject;⁹⁴ and every presumption will be made in favor of the regularity of its action.⁹⁵ Where the call was to amend the law relating to elections, known as the Australian ballot law, in specified particulars, it was held that the amendment of the law generally was included, and that the legislature was not limited to the particulars specified.⁹⁶ So, where the call was "to reduce the penalties and interest on delinquent taxes to one-half the present rates," it was held that the legislature was authorized to act generally on the subject of such reduction, and that it was not confined to the precise amount stated in the call.⁹⁷ Whether an extraordinary occasion exists which justifies the calling of an extra session is solely a question for the executive.⁹⁸

§ 66. Limitation of time for introduction of bills or duration of session.—If the constitution prohibits the introduction of bills after a certain period in a session, the regulation cannot be evaded by substituting new measures by amendment of pending bills.⁹⁹ But whatever is within the proper scope of amendment is admissible after that period, and this embraces whatever is germane to the purpose which the bill had in view.¹ Therefore, it was held

⁹² Wells v. Mo. Pac. Ry. Co., 110 Mo. 286, 19 S. W. 530, 15 L. R. A. 847.

⁹³ In re Governor's Proclamation, 19 Colo. 333, 35 Pac. 580.

⁹⁴ Brown v. State, 32 Tex. Crim. Rep. 119, 22 S. W. 596.

⁹⁵ Chicago, B. & Q. R. R. Co. v. Wolfe, 61 Neb. 502, 86 N. W. 441.

⁹⁶ People v. Johnson, 23 Colo. 150, 46 Pac. 681.

⁹⁷ Baker v. Kaiser, 126 Fed. 817, — C. C. A. —.

⁹⁸ Farrelly v. Cole, 60 Kan. 356, 56 Pac. 15, 44 L. R. A. 464.

⁹⁹ Pack v. Barton, 47 Mich. 520, 11 N. W. 367; Powell v. Jackson, 51 Mich. 129, 16 N. W. 369; Sackrider v. Board of Sup'rs, 79 Mich. 59, 44 N. W. 165; Attorney-General v. Detroit, etc. Plank Road Co., 97 Mich. 589, 56 N. W. 943. See Sayre v. Pollard, 77 Ala. 608.

¹ Hale v. McGettigan, 114 Cal. 112, 45 Pac. 1049; Caldwell v. Ward, 83 Mich. 13, 46 N. W. 1024; Toll v. Jerome, 101 Mich. 468, 59 N. W. 816; Davook v. Moore, 105 Mich. 120, 63 N. W. 424, 28 L. R. A. 783; Renackowsky v. Board of Water

that a bill to organize a township might be changed by amendment to organize the same territory into a county.² So where several bills were introduced within the period to amend a particular act, a substitute bill on the same subject in the form of an original act was held proper.³ A bill applicable to a county may be changed by amendment to apply to the entire state.⁴ In the case cited the court says: "The right to enlarge or limit the territory within which such acts shall be operative, under bills which, as introduced, include a part or all of the state, has never been questioned. It can as well be done after the fifty-day limit as before." In Michigan it is held that a bill to amend a single section of an act may be changed after the period to a bill to amend any other section or sections of the same act.⁵ The question whether an amendment or substitute, introduced after the period limited has expired, is germane to the original bill or bills, must be determined from the journal, and for this purpose the contents of the original bill will be presumed to correspond to its title.⁶

The constitution of Tennessee provides that "after a bill

Com'rs, 122 Mich. 618, 81 N. W. 581.

² Pack v. Barton, 47 Mich. 520, 11 N. W. 367.

³ Hale v. McGettigan, 114 Cal. 112, 45 Pac. 1049. The court says: "There can be no presumption that the legislature has disregarded any constitutional requirements in the passage of a statute, and if the journals are silent upon the observance of any constitutional requirement, it cannot be assumed that such requirement was omitted by the legislature. If a bill has been introduced in either house within the first fifty days of the session, whatever is proper in the way of amendment is as admissible after the fifty days as before, and this

will include whatever is within the purpose of the bill. By the same rules a substitute that is germane to the subject of the bill may be adopted, without violating this provision of the constitution, since such substitute is in effect only an enlarged amendment to the bill for which it is offered." p. 116.

⁴ Caldwell v. Ward, 83 Mich. 18, 46 N. W. 1024.

⁵ Common Council v. Schmidt, 128 Mich. 379, 87 N. W. 383, 92 Am. St. Rep. 468.

⁶ Caldwell v. Ward, 83 Mich. 18, 46 N. W. 1024; Attorney-General v. Detroit, etc. Plank Road Co., 97 Mich. 589, 56 N. W. 943.

has been rejected no bill containing the same substance shall be passed into a law during the same session.”⁷ It is held the “session” means one sitting of the assembly, and not the life of the body, and, therefore, that a bill rejected at a regular session may be passed at a special session of the same legislature, if embraced in the call.⁸

Where a session was limited to fifty days, it was held to mean working days, or fifty days exclusive of Sundays.⁹ In another case, where the session was limited to forty days, it was held to embrace at least forty full days from the hour of convening, and that a session begun at noon of November 6 did not expire before noon of December 16.¹⁰

§ 67 (60). *Forms of legislation.*—A bill is a form or draft of a law presented to a legislature, but not yet enacted, or before it is enacted; a proposed or projected law.¹¹ This is the meaning of a bill in practice, and has been judicially commended.¹² It is an act after it has gone through the process of enactment and become a law. A legislative act or statute is a bill passed and approved under the introductory words, formula or style, “Be it enacted.” The term *bill* is sometimes loosely applied to mean the same as an act, as well as to other forms of proposed or completed legislation.¹³ These terms, *bill* and *act*, are used as synonymous in some of our constitutions.¹⁴

§ 68 (61). Ordinances have sometimes been distinguished from statutes in practice; not that to ordain is of less force than the expression to enact, but, as Lord Coke says, because an ordinance has not the assent of the king, lords and commons, being made by only one or two of those powers. It is, however, stated in Bacon’s Abridgment that this distinction has been disputed. It is there laid down that “with

⁷ Art. 2, sec. 19.

⁸ Williams v. Nashville, 89 Tenn. 487, 15 S. W. 364.

⁹ Ex parte Cowert, 92 Ala. 94, 9 So. 225.

¹⁰ White v. Hinton, 8 Wyo. 753, 185. 80 Pac. 953, 17 L. R. A. 66.

¹¹ Webster’s Dict.

¹² May v. Rice, 91 Ind. 549.

¹³ Cushing, L. & P. of Leg. Ass., § 2055.

¹⁴ People v. Lawrence, 36 Barb.

regard to parliamentary forms this much seems agreed: that where the proceeding consisted only of a petition from parliament, and an answer from the king, these were entered on the parliament roll; and if the matter was of a public nature, the whole was then usually styled an ordinance; if, however, the petition and answer were not only of a public but a novel nature, they were then formed into an act by the king, with the aid of his council and judges, and entered on the statute roll."¹⁵ It is also laid down by the same authority that an ordinance on the parliamentary roll, with the king's assent upon it, has, nevertheless, equal force with a statute.¹⁶ The term *ordinance* is more usually applied to the acts of a corporation, and as synonymous with by-law.¹⁷ It has, however, been often used in more solemn acts of the states and of the general government.¹⁸ Resolutions, or joint resolutions, are a form of legislation which has been in frequent use in this country, chiefly for administrative purposes of a local or temporary character, and sometimes for private purposes only. It is recognized in many of our constitutions, in which, and in the rules and orders of our legislative bodies, it is put upon the same footing and made subject to the same regulations as bills properly so called.¹⁹ By legislative practice and usage, joint resolutions have the force of law, whether applied to administrative, local or temporary matters, or intended for important measures.²⁰ But where the constitution provides that no law shall be passed except by bill, a joint resolution is not a law.²¹

§ 69 (62). Constitutional provisions as to enacting style held directory.—Many constitutions provide that laws shall be enacted by bill, and direct that the style shall be, "Be it enacted," etc. In a few states such provisions have

¹⁵ Bac. Abr., Statute A.

¹⁶ Id.

¹⁷ Bish., Written Laws, § 18.

¹⁸ Cush., L. & Pr. Leg. Ass., § 2046.

¹⁹ Cushing, L. & Pr. Leg. Ass., § 2403; Swann v. Buck, 40 Miss. 293.

²⁰ Id.; McCarver v. Herzberg, 120 Ala. 523, 25 So. 3.

²¹ Mullan v. State, 114 Cal. 578, 46 Pac. 670, 34 L. R. A. 262; Collier & C. Lithographing Co. v. Henderson, 18 Colo. 259, 32 Pac. 417; Henderson v. Collier & C. Lith. Co., 2 Colo. App. 251, 30 Pac. 40.

been held to be directory. Thus, in *Swann v. Buck*,²² it was so held that a joint resolution passed by all the forms of legislation was valid — that the word “resolved” is as potent to declare the legislative will as the word “enacted.” The court say: “The argument against requiring a literal compliance with any form of words in the enacting clause, as a condition of giving effect to a statute, would be very strong on the score of convenience; for the plainest expressions of the legislative will, and the most urgent in their character, would be constantly liable to be defeated by the slightest omission or departure from the established phraseology. No possible good could be achieved by such strictness, and the greatest evil might result from it. There are no exclusive words in the constitution negating the use of any other language, and we think the intention will be best effectuated by holding the clause to be directory only.”

§ 70 (63). The several constitutions of Mississippi make a plain distinction between bills and resolutions, as does the constitution of Indiana. There seem to be many of the contrasts pointed out in the opinion in *May v. Rice*,²³ which will presently be referred to particularly.²⁴ The constitutions of Maryland have made no provision for any form of legislation but by “original bill.” They have provided that “The style of all laws . . . shall be, ‘Be it enacted by the general assembly of Maryland;’ and all laws shall be passed by original bill.”²⁵ The case of *McPherson v. Leonard*²⁶ does not altogether follow *Swann v. Buck*²⁷ in the reasoning upon which the court arrived at the conclusion that the foregoing provisions are directory. The Mississippi case concedes that, to be valid, an act should refer to the

²² 40 Miss. 268.

²⁴ See *post*, § 71.

²³ 91 Ind. 546. Const. 1817, art. 3, §§ 4, 23, 24; art. 4, §§ 15, 16; art. 6, §§ 2, 8, 10, 11, 14. Const. 1832, art. 3, §§ 4, 23, 24; art. 5, §§ 15, 16; art. 7, §§ 2, 6, 7, 9, 10. Const. 1868, art. 4, §§ 23, 24, 25, 26, 32; art. 12, §§ 2, 4, 8, 11.

²⁵ Const. 1851, art. 3, §§ 17, 18, 19, 20; Const. 1864, art. 3, §§ 26, 27, 28; Const. 1867, art. 3, §§ 27, 28, 29, 32.

²⁶ 29 Md. 377.

²⁷ 40 Miss. 293.

enacting authority. That was the point of the objection to the act in the Maryland case. The court held the above provisions directory, and, therefore, as the court said, "may be disregarded without rendering the act void." It was so held upon the rule applicable in the construction of statutes that provisions which relate to form, and not to the essence and substance of the thing to be done, are directory unless the statute is restrictive to the mode and form prescribed.²⁸ The constitution of Missouri prescribes also a precise style, and declares it shall be the style of the laws of that state.²⁹ The act in question in the *City of Girardeau v. Riley*³⁰ had no enacting clause or style. That provision of the constitution was held directory and the act valid, and upon the same argument put forth in *McPherson v. Leonard*.³¹ The court remarked on the similarity of the language as to process requiring writs to run in the name of the state, and that that provision had been held to be directory.³²

§ 71 (64). Constitutional provisions as to enacting style held mandatory.—The requirement that laws shall be passed under a precise enacting style, commencing with the words, "Be it enacted," and referring to the enacting authority, has been held mandatory in Indiana, Nevada, Alabama, Rhode Island and West Virginia. In other states the courts have held other provisions of the constitutions of like nature to be mandatory.³³ In Indiana the constitution plainly distinguishes between bills and resolutions, as does the constitution of Mississippi. In *May v. Rice*,³⁴ the question was whether money could be appropriated by a joint resolution. It was held that such a resolution was ineffectual

²⁸ Citing Sedgw. on St. & Con. L. 368 et seq., and cases there cited; Smith on S. & C. Con., § 679; *Striker v. Kelly*, 7 Hill, 24; *Pacific R. R. v. The Governor*, 23 Mo. 368, 66 Am. Dec. 673. See *post*, §§ 625, 628.

²⁹ Const. 1820, art. 3, § 36; Const. 1865, art. 4, § 26; Const. 1875, art. 4, § 24.

³⁰ 52 Mo. 424.

³¹ 29 Md. 377.

³² *Davis v. Wood*, 7 Mo. 165; *Jump v. Batton*, 35 id. 196, 86 Am. Dec. 146; *Doan v. Boley*, 38 Mo. 449.

³³ See *ante*, §§ 30–36; *post*, § 112.

³⁴ 91 Ind. 546.

for that purpose. The constitution prohibits the drawing of money from the state treasury, except in pursuance of appropriations made by *law*. It also requires that "the style of *every law* shall be: 'Be it enacted by the general assembly of the state of Indiana,' and no law shall be enacted except by bill."³⁵ The resolution was held not, *nomine*, enacted as a "bill." The opinion answers three inquiries: 1st. "Is it essential to constitute a law, in the sense in which that term is used in the constitution, that the enactment shall have been presented and passed as a bill? 2d. Is it essential in the enactment of a law that the words prescribed for the enacting clause shall be used, or may the words 'Be it resolved' be substituted for 'Be it enacted?' Out of these inquiries," say the court, "springs the more general one: 3d. Is this resolution a law, in any sense, as that term is used in these sections of the constitution . . . in relation to the appropriation of money?" The first two were answered in the affirmative, and the last in the negative.

The opinion points out important differences in the procedure for the passage of bills from that which may be followed in the adoption of resolutions, showing that the former only are intended for the enactment of laws. These differences may be observed in other constitutions, and therefore a considerable extract from the opinion has been quoted in the note below.³⁶ The words of the enacting style need not precede a preamble, but should precede the entire law.³⁷

³⁵ Const. 1851, art. 4, sec. 1; art. 10, sec. 3.

³⁶ Zollards, J.: "Is a resolution a bill? Perhaps as accurate a definition of a bill as can be found is that given in Webster's Dictionary: 'A form or draft of law, presented to a legislature, but not yet enacted; a proposed or projected law.' 'In some cases statutes are called bills, but usually they are qualified by

some description; as, a bill of attainder.' Bills and acts are sometimes used as synonymous terms. Cushing, sec. 2055. The definition of a bill as given by Webster is that usually accepted and acted upon; but as we shall see, our constitution extends it. The idea conveyed by the word *bill* is different from that conveyed by the word *resolution*. The distinction between a bill and

³⁷ Barton v. McWhinney, 85 Ind. 481.

§ 72 (65). The same question arose in Nevada as in *McPherson v. Leonard*.²⁸ The provision of the constitution in Nevada is that "the enacting clause of every law shall be as follows: 'The people of the state of Nevada, represented

resolution is clearly kept up in the constitution of this state as an examination of its provisions will show. We call attention to some of the sections of article 4. Bills may originate in either house, except revenue bills. Sec. 17. The vote on the passage of a bill or joint resolution shall be taken by yeas and nays. The bill must be read by sections on three different days, etc. Sec. 18. A joint resolution of different sections doubtless may be passed upon one reading. Every act shall embrace but one subject and matters properly connected therewith, which subject shall be embraced in the title. Sec. 19. There is no such provision in relation to joint resolutions. No act shall ever be revised or amended by mere reference to its title. Sec. 21. This section has no reference to joint resolutions. No "act" shall take effect until the same shall have been published and circulated in the several counties of the state by authority, except in cases of emergency, etc. Sec. 28. This can have no reference to joint resolutions. They take effect as soon as passed. Bills and joint resolutions must be passed by a vote of a majority of the members of the legislature, and when so passed shall be signed by the presiding officers of the respective houses. These requisites they have in common,

but the distinction is clearly kept up. Sec. 25. In section 14 of article 5, a bill is recognized as still a bill, after its passage and until it has reached the governor. Every bill which has passed, etc., shall be presented to the governor. The governor is required either to sign the bill, or return it to the house in which it may have originated, with his objections, etc. If he sign the bill, it becomes a law. If he veto it, and it is not repassed by the requisite vote, it does not become a law. Nothing of the kind is required in relation to a joint resolution under our constitution as we understand and interpret that instrument. Such a resolution, if passed by the requisite vote, and signed by the presiding officers, is in full force. Nothing would be added to its validity and force by the signature of the governor, nor has he any power to defeat it by a veto. It does not go to him for any purpose of approval or disapproval. It appears from the constitutional debates that a proposition to include joint resolutions with bills in the above section, so that they should be sent to the governor, was voted down. 2 Deb. Const. Conv., p. 1331. This action of the convention is the more significant when we recollect that the convention was in a work of reform, adapting the new constitution to the increased wants

²⁸ 29 Md. 386; *ante*, § 2.

in senate and assembly, do enact.' " In the case in which the question was discussed,²⁹ it appeared that an act was passed in the enacting clause of which there was omitted

and dangers of a rapidly increasing and progressive population, and that the constitution of 1816, which was being superseded, provided for joint resolutions as well as bills to be sent to the governor for his approval or disapproval, and to be treated by him and the legislature as bills if vetoed by him. It is very apparent from this examination of the constitution that the terms *bill* and *joint resolution*, as used therein, do not mean the same thing. They are widely different. Their functions are altogether different. Authority to act by joint resolution is given, affirmatively, by the constitution in but few instances.

"By such resolution, the two houses may adjourn for more than three days. Art. 4, sec. 10. Certain officers may be removed by such resolution. Art. 6, sec. 7. Possibly under section 17 of article 5, the powers granted to grant pardons, etc., may be exercised by such resolution. Besides the authority thus granted, a joint resolution doubtless may be the means of expressing the legislative will in reference to the discharge of an administrative duty, if such expression falls short of the enactment of a law. The general and most common use of resolutions is in the adoption of rules and orders relative to the proceedings of the legislative body. Cushing, *supra*, sec. 779; May's Par. Prac., pp. 440, 447, 450. Our conclusion upon this branch of the case is that a joint

resolution under our constitution is not a bill, and that laws for the appropriation of money for public purposes or the payment of private claims . . . cannot be enacted by joint resolution. This view is sustained by the cases of *Barry v. Viall*, 12 R. L. 1, 18; *Reynolds v. Blue*, 47 Ala. 711; *Brown v. Fleischer*, 4 Ore. 132; *Boyen v. Crane*, 1 W. Va. 176."

In deference to the opinion in *Swann v. Buck*, 40 Miss. 268, the court in *May v. Rice* appear to consider the expression "every law," in the provision of the Indiana constitution relative to the enacting style, as more comprehensive and exclusive than the expression "the laws of this state," in the corresponding provision of the Mississippi constitution. The latter are the words of the Mississippi constitution, and the court, in *Swann v. Buck*, said, "there are no exclusive words in the constitution negating the use of any other language;" meaning, doubtless, that the constitution did not forbid the use of any other words, or the passage of a law without those prescribed; for "the laws of this state" include all, as much as the expression "every law." If a command broad enough affirmatively to include all the laws implies a negative, then one is implied from the language of the constitutions of both states.

²⁹ *State v. Rogers*, 10 Nev. 250.

the words "senate and." The act was held unconstitutional and void. In the opinion, the court responds to the declaration in the Maryland case that the enacting style is not of the essence and substance of the enactment. Hawley, C. J., said that statement is clearly erroneous and the opinion fallacious. "How can it be said that these words are not of the essence and substance of a law when the constitution declares that the enacting clause of every law shall contain them." He quoted, with apparent approval, from the dissenting opinion of Stewart, J., in the Maryland case, that it is incumbent on the law-making department to pursue the constitutional mode. "If a positive requirement of this character . . . can be disregarded, so may others of a different character; and where will the limit be affixed or practical discrimination made as to what parts of the organic law of the state are to be held advisory, directory or mandatory? Disregard of the requirements of the constitution, although, perchance, in matters of mere form and style, in any part, in law, may establish dangerous examples, and should in all proper ways be discountenanced. The safer policy, I think, is to follow its plain mandates in matters that may appear not to be material, in order that the more substantial parts may be duly respected. If those who are delegated with the trust of making the laws, from the purest motives improvidently omit the observances of the constitution under any circumstances, such oversight may be referred to in the future by others, with far different views, as precedents, and for the purpose of abuse. A higher responsibility is imposed upon those selected by the people for the discharge of legislative duty, and a greater obligation is demanded of them to exemplify, by their practice, a careful compliance with the constitution. By a vigilant observance of its commands, the more reasonable is the probability that the best order will be secured. It is unnecessary to illustrate, by any argument, the soundness of this general consideration, which I am sure all will admit to be unquestionable, that a strict conformity is an axiom

in the science of government. I certainly entertain such profound conviction of its truth that I do not feel authorized to give my approval to this act as a valid law; but, on the contrary, am constrained to say that the omission of the style required by the constitution is fatal to its validity."⁴⁰ A law without an enacting clause was held invalid in Michigan and in Minnesota, and the insertion of an enacting clause after the passage of an act by the houses and before approval by the governor was held ineffectual.⁴¹ In Louisiana it is intimated that the words: "Be it enacted by the general assembly," would be sufficient, though the constitution prescribes the words: "Be it enacted by the general assembly of the state of Louisiana."⁴²

§ 73 (66). The modern constitutions go more and more into detail in regulating the exercise of the several powers which they grant. The object is manifestly to correct existing or apprehended mischief; not to legislate merely for order and convenient system. These regulations are in the fundamental law; they express the sovereign will of the people, and ought to be treated as limitations on the exercise of those powers. The modes prescribed for the exercise of the granted powers cannot be severed from the substantive things authorized to be done; the manner directed is the means — the appointed action — through which alone the power is effective for the substantive objects intended to be accomplished. The legislature must be constituted, sit at the time and place, and proceed in the methods dictated by its creator; otherwise it is not clothed with nor exercising the sovereign legislative power. The great weight of authority supports this view.⁴³

⁴⁰ Cushing's L. & Pr. Leg. Ass. J. 819, § 2102; Seat of Government Case, 1 Wash. T. 115.

⁴¹ People v. Dettenthaler, 118 Mich. 505, 77 N. W. 450, 44 L. R. A. 164; Sjoberg v. Security S. & L. Co., 73 Minn. 203, 75 N. W. 1116, 32 Am. St. Rep. 616.

⁴² State v. Harris, 47 La. Ann. 386, 17 So. 129.

⁴³ See *ante*, §§ 31, 44; *post*, § 112: Cooley, Con. L. 94. This learned author says the courts tread upon very dangerous ground when they venture to apply the rules which distinguish directory and manda-

§ 74. Enrolled act conclusive as to words of statute.— When there is a discrepancy between the printed statute and the enrolled act, all the authorities agree that the latter controls.⁴⁴ But where the discrepancy was in the

tory statutes to the provisions of a constitution. "Constitutions do not usually undertake to prescribe mere rules of proceeding, except when such rules are looked upon as essential to the thing to be done; and they then must be regarded in the light of limitations upon the power to be exercised. It is the province of an instrument of this solemn and permanent character to establish those fundamental maxims, and fix those unvarying rules, by which all departments of the government must at all times shape their conduct; and if it descends to prescribing mere rules of order in unessential matters, it is lowering the proper dignity of such an instrument and usurping the proper province of ordinary legislation. We are not, therefore, to expect to find in a constitution provisions which the people, in adopting it, have not regarded as of high importance, and worthy to be embraced in an instrument which, for a time at least, is to control alike the government and the governed, and to form a standard by which is to be measured the power which can be exercised as well by the delegate as by the sovereign people themselves. If directions are given respecting the times or modes of proceeding in which a power should be exercised, there is at least a strong presumption that the people designed it should be exercised in that time and mode only." *State v. John-*

son, 26 Ark. 281; *Wolcott v. Wighton*, 7 Ind. 44; per *Bronson* in *People v. Purdy*, 2 Hill, 36; *Greencastle Township v. Black*, 5 Ind. 566; *Opinion of Judges*, 6 Sheply, 458. See *People v. Lawrence*, 36 Barb. 177. "The essential nature and object of constitutional law being restrictive upon the powers of the several departments of the government, it is difficult to comprehend how its provisions can be regarded as merely directory." *Nicholson*, C. J., in *Cannon v. Mathes*, 8 Heisk. 504, 517. *Mr. Cooley* adds that "We impute to the people a want of due appreciation of the purpose and proper province of such an instrument, when we infer that such directions are given to any other end. Especially when, as has been already said, it is but fair to presume that the people in their constitution have expressed themselves in careful and measured terms, corresponding with the immense importance of the powers delegated, and with a view to leave as little as possible to implication." *People v. Supervisors of Chenango*, 8 N. Y. 328.

⁴⁴ *Hurlburt v. Merriam*, 3 Mich. 144; *Reed v. Clark*, 3 McLean, 480. Fed. Cas. No. 11,648; *People v. Commissioners*, 54 N. Y. 276, 13 Am. Rep. 581; *Greer v. State*, 54 Miss. 378; *De Bow v. People*, 1 Denio, 9; *Rex v. Jefferies*, 1 Strange, 446; *Wilson v. Duncan*, 114 Ala. 659, 21 So. 1017; *McLaughlin v. Menotti*, 105 Cal. 573, 38 Pac. 973; *Everett v.*

amount of a penalty, the enrolled act providing a greater, the court refused to enforce it after an acquiescence of twenty years.⁴⁵

§ 75. Adoption of code or revision by reference.—It has always been common to adopt in one statute by reference certain provisions of another statute. There has never been any serious question as to the validity of such legislation, or as to its effectiveness to accomplish the intent of the legislature.⁴⁶ It is also not uncommon to adopt a code or general revision of statutes in the same manner. An instance of such an adopting act is as follows: "That the code of laws prepared under its authority by (giving the names) and revised, fully examined and identified by the certificate of its joint committee, and recommended and reported for adoption, and with the acts passed by the general assembly of 1895 added thereto by the codifiers, be, and the same is, hereby adopted and made of force as the

State, 33 Fla. 661, 15 So. 543; Lampkin v. State, 87 Ga. 516, 13 S. E. 523; Ruckert v. Grand Ave. Ry. Co., 163 Mo. 260, 63 S. W. 814; Nugent v. Jackson, 72 Miss. 1040, 18 So. 493; Bruce v. State, 48 Neb. 570, 67 N. W. 454; Lowenstein v. Young, 8 Okl. 216, 57 Pac. 164; Weaver v. Davidson County, 104 Tenn. 315, 59 S. W. 1105; Ex parte Tipton, 28 Tex. Ct. App. 438, 13 S. W. 610; Johnson v. Barham, 99 Va. 305, 38 S. E. 136.

⁴⁵It was held in *Town of Pacific v. Seifert*, 79 Mo. 210, that the original roll, as deposited with the secretary of state, is the best evidence of a legislative enactment. Where, however, there is a discrepancy between the charter of the town as published in the printed laws of the state and the statute roll on file in the office of the secretary of state in this, that in the former it was

provided that the trustees of the town might impose fines for breach of any of the ordinances not to exceed twenty dollars in amount, and in the latter the word twenty was ninety, and for aught that appeared on the record this discrepancy was first brought to the attention of the defendant upon the trial, about twenty years after the enactment of the charter, in an action by the town to recover of him the penalty of \$90 for refusing to take out a merchant's license as required by an ordinance, it was held that, under these exceptional circumstances, the printed copy of the charter should control in determining the defendant's liability. See *Att'y-General v. Joy*, 55 Mich. 94; *Pease v. Peck*, 18 How. 595, 15 L. Ed. 518.

⁴⁶See *post*, §§ 372, 405.

Code of Georgia."⁴⁷ It is held that in form and substance such an act is valid and effective to enact and make of force the code or revision referred to, that such code or revision need not be read as prescribed in the constitution for bills, that a title appropriate to the adopting act is sufficient though it may not express the subject of the code or revision, and that it is not obnoxious to the provision of the constitution against reviving or amending an act by reference to its title only.⁴⁸

§ 76. Statutes and legislative rules relating to the enactment of laws.—It is competent for legislative bodies to adopt rules of procedure, and such power is frequently conferred in express terms by the constitution. In speaking of this power the supreme court of the United States says: "The constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just. It is no objection to the validity of a rule that a different one has been prescribed and in force for a length of time. The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and, within the limitations suggested, absolute and beyond the challenge of any other body or tribunal."⁴⁹

⁴⁷ *Central of Georgia Ry. Co. v. State*, 104 Ga. 831, 31 S. E. 531, 42 L. R. A. 518. The title of the adopting act was as follows: "An act to approve, adopt and make of force the code of laws prepared under the direction and by authority of the general assembly, to provide for the printing and publication of

the same, and for making indices thereto, and for other purposes."

⁴⁸ *Mathis v. State*, 31 Fla. 291, 12 So. 681; *Central of Georgia Ry. Co. v. State*, 104 Ga. 831, 31 S. E. 531, 42 L. R. A. 518; *Hunt v. Wright*, 70 Miss. 298, 11 So. 608.

⁴⁹ *United States v. Ballin*, 144 U. S. 1, 12 S. C. Rep. 507, 36 L. Ed. 821.

It is held that an act cannot be declared invalid for failure of the legislature, or of either house, to observe its own rules, and that the courts will not inquire whether such rules have been observed in the passage of an act.⁵⁰ So it is held that one legislature cannot bind or restrict its successors by passing statutes as to the manner of legislation, and that an act will not be declared invalid for failure to observe such statutory requirements.⁵¹

The following rule of the house of representatives was held not to violate the principles laid down in the text: "On the demand of any member, or at the suggestion of the speaker, the names of members sufficient to make a quorum in the hall of the house who do not vote shall be noted by the clerk and recorded in the journal, and reported to the speaker with the names of the members voting, and be counted and announced in determining the presence of a quorum to do business."

⁵⁰Switzer v. Territory, 5 Okl. 297, 47 Pac. 1094; State v. Brown, 33 S. C. 151, 11 S. E. 641; McDonald v. State, 80 Wis. 407, 50 N. W. 185; In re Ryan, 80 Wis. 414, 50 N. W. 187; St. Louis & S. F. Ry. Co. v. Gill, 54 Ark. 101, 15 S. W. 18. In McDonald v. State the court says: "The courts will take judicial notice of the statute laws of the state, and to this end they will take like notice of the contents of the journals of the two houses of the legislature far enough to determine whether an act published as a law was actually passed by the respective houses in accordance with constitutional requirements. Further than this the courts will not go. When it appears that an act was so

passed, no inquiry will be permitted to ascertain whether the two houses have or have not complied strictly with their own rules in their procedure upon the bill intermediate its introduction and final passage. The presumption is conclusive that they have done so. We think no court has ever declared an act of the legislature void for non-compliance with the rules of procedure made by itself, or the respective branches thereof, and which it or they may change or suspend at will. If there are any such adjudications we decline to follow them."

⁵¹Cook v. State, 26 Ind. App. 273, 59 N. E. 489; State v. Wirt County Court, 37 W. Va. 808, 17 S. E. 379; Marrigault v. Ward, 123 Fed. 707. In the last case the court says: "In the case at bar there was no constitutional requirement which has been violated. The provisions of an act of a preceding legislature have not been followed in the matter of notice required by the act. Does this make this act invalid? The legislative power in South Carolina is vested in the general assembly. The constitution fixes the power of the general assembly. Each general assembly possesses all these powers, and is

§ 77. Federal courts follow state courts.— In determining whether a state statute has been duly passed and what is the proper evidence thereof, the federal courts will follow the rules laid down by the state supreme court.⁵² In the absence of state decisions the federal rules will be followed.⁵³

§ 78. Notice of private and local bills.— The constitution of New Jersey provides that “no private, special or local bill shall be passed unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given.”⁵⁴ It also provides that the legislature shall prescribe the mode of giving notice, the evidence thereof, and how such evidence shall be preserved. Similar provisions are found in the constitutions of other states. Sometimes the mode of giving notice is prescribed by the constitution and sometimes it is left to the legislature. It is held that an amendment of a private or local law must be notified in the same manner as an original act.⁵⁵ Some courts hold that the legislature is the exclusive judge of whether the required notice was given.⁵⁶ Other courts hold

subject to no limitation not found in the constitution. One legislature, therefore, cannot curtail or enlarge the power of any succeeding legislature, unless, indeed, within its constitutional powers a legislature has entered into a contract with a third party. Such a contract is protected under the constitution of the United States. When, therefore, one general assembly passes an act like this in question, declaring that no bill shall be introduced or entertained in either house of the general assembly, unless certain prerequisite conditions are fulfilled—conditions not existing in the constitution,—it assumes a power which it does not possess. If, notwithstanding, any succeeding general assembly shall receive and entertain a

bill which has not fulfilled these conditions, this action on its part is either a declaration of its independence of these restrictions or it is a repeal of the previous act *pro tanto*.” pp. 716–717. In *Chalfant v. Edwards*, 173 Pa. St. 246, 33 Atl. 1048, an act prescribing how notice should be given of an application for a local law was held binding on future legislatures until repealed.

⁵² *In re Duncan*, 139 U. S. 449, 11 S. C. Rep. 573, 35 L. Ed. 219; *Stanley Co. Com'rs v. Coler*, 96 Fed. 284, 37 C. C. A. 484.

⁵³ *Ames v. Union Pac. R. R. Co.*, 64 Fed. 165.

⁵⁴ Art. 4, sec. 7, par. 9.

⁵⁵ *Ashbrook v. Schaub*, 160 Mo. 107, 60 S. W. 1035.

⁵⁶ *Stockton v. Powell*, 29 Fla. 1,

that it is a judicial question and, if the prescribed notice is not given, the act is void.⁵⁷ Notice will be presumed in the absence of evidence to the contrary.⁵⁸ A special act to incorporate a borough, embracing different territory than is specified in the notice, is invalid.⁵⁹

§ 79. Where the power to legislate on a subject is conditioned upon the existence of certain facts.—The constitution of Missouri forbids the establishment of criminal courts except in counties having a population exceeding fifty thousand. Where the legislature established such a court for a certain county, reciting in the act that it had a population of over fifty thousand, it was held that the finding of the legislature was conclusive.⁶⁰ A similar ruling has

10 So. 688, 15 L. R. A. 42; *Speer v. Mayor*, 85 Ga. 49, 11 S. E. 802, 9 L. R. A. 402; *Reed v. McCrary*, 94 Ga. 487, 21 S. E. 232; *Cutcher v. Crawford*, 105 Ga. 180, 31 S. E. 139. In *Chamlee v. Davis*, 115 Ga. 266, 41 S. E. 691, it is said that the giving of notice will be presumed unless the contrary appears from the journals. To same effect, *Keene v. Jefferson County*, 135 Ala. 465, 33 So. 435.

⁵⁷ *State v. Trenton*, 57 N. J. L. 318, 31 Atl. 223; *Attorney-General v. Tuckerton*, 67 N. J. L. 120, 50 Atl. 602; *Chalfant v. Edwards*, 173 Pa. St. 246, 33 Atl. 1048. In the first case the court says: "We are of the opinion that the constitutional prescription, not only that the legislature shall fix the time and mode of giving the notice, but that it shall also prescribe what shall be evidence of the notice and how such evidence shall be preserved, leads to the conclusion that such evidence was to be preserved for a purpose other than mere leg-

islative convenience. We think the intent to be deduced from the constitutional language is that resort can be had to this evidence whenever it becomes necessary to determine in a court whether this condition precedent to a constitutional special statute has an existence." p. 820.

⁵⁸ *City v. McMichael*, 12 Pa. Dist. Ct. 403.

⁵⁹ *Attorney-General v. Tuckerton*, 67 N. J. L. 120, 50 Atl. 602.

⁶⁰ *Ex parte Renfrow*, 112 Mo. 591, 20 S. W. 682. The court says: "And it now may be considered settled law in this state, that when it becomes necessary for the legislative department of the state to inquire into and determine a question of fact upon which depends its power under constitutional restrictions to enact a law, and they do so inquire and determine that fact, it will not be again inquired into by the judicial department of the state in a collateral proceeding." p. 598.

been made in West Virginia under a provision which forbids local or special laws incorporating a municipality containing a less population than two thousand.⁶¹ So where the constitution required a two-thirds vote of the electors of a county before an act could be passed removing the county seat.⁶² It is held that no recital of the facts in the statute is necessary. And where the constitution forbids the formation of a new county with less than two thousand population, it was held that the passage of an act creating a new county was equivalent to a finding that the necessary population existed.⁶³ The question has been elaborately considered in California under a constitutional provision forbidding any gift of public money or property to any individual. The supreme court holds that the validity of an act appropriating public money or property to an individual must be determined by what appears on the face of the statute. The court says: "While the courts have undoubted power to declare a statute invalid, when it appears to them in the course of judicial action to be in conflict with the constitution, yet they can only do so when the question arises as a pure question of law, unmixed with matters of fact the existence of which must be determined upon a trial, and as the result of, it may be, conflicting evidence. When the right to enact a law depends upon the existence of facts, it is the duty of the legislature before passing the bill, and of the governor before approving it, to become satisfied in some appropriate way that the facts exist; and no authority is conferred upon the courts to hear evidence, and determine, as a question of fact, whether these co-ordinate departments of the state government have properly discharged such duty. The authority and duty to ascertain the facts which ought to control legislative action are, from the necessity of the case, devolved by the constitution upon those to whom it

⁶¹ Roby v. Shepard, 42 W. Va. 286, 26 S. E. 278.

⁶² Farquharson v. Teargin, 24 Wash. 549, 64 Pac. 717.

⁶³ Cutcher v. Crawford, 105 Ga. 180, 13 S. E. 139.

has given the power to legislate, and their decision that the facts exist is conclusive upon the courts, in the absence of an explicit provision in the constitution giving the judiciary the right to review such action. We therefore hold that, in passing upon the constitutionality of a statute, the court must confine itself to a consideration of those matters which appear upon the face of the law, and those facts of which it can take judicial notice. If the law, when thus considered, does not appear to be unconstitutional, the court will not go behind it; and, by a resort to evidence, undertake to ascertain whether the legislature, in its enactment, observed the restrictions which the constitution imposed upon it as a duty to do, and to the performance of which its members were bound by their oath of office.”⁶⁴

§ 80. Miscellaneous cases as to procedure in the enactment of laws.—Where an act was invalid by reason of informality in its passage, it was held that a later act of the same session, referring to it as a law and requiring the secretary of state to have five thousand copies thereof printed and distributed among the officers of the state whose duty it was to carry it into execution, amounted to a ratification and attestation of the act so as to constitute it a valid law.⁶⁵ A senate bill was amended in the house, resulting in a disagreement and a conference committee, which recommended that the house recede from its amendments. The house did so, the question being put as follows: “Shall the house recede from the amendments and adopt the report of the conference committee?” This motion being carried, it was held sufficient without repassing the bill.⁶⁶ The constitution of Missouri provides that “no bill shall be so

⁶⁴Stevenson v. Colgan, 91 Cal. 649, 27 Pac. 1089, 25 Am. St. Rep. 280, 14 L. R. A. 459. Also Rankin v. Colgan, 93 Cal. 605, 28 Pac. 673; Bourn v. Hart, 93 Cal. 821, 28 Pac. 951, 27 Am. St. Rep. 203, 15 L. R. A. 481; Green v. Fresno County, 95 Cal. 829, 80 Pac. 544; Patty v. Colgan, 97 Cal. 251, 31 Pac. 1138; Conlin v. Supervisors, 99 Cal. 17, 33 Pac. 753, 37 Am. St. Rep. 17, 21 L. R. A. 474.

⁶⁵Wrought Iron Range Co. v. Carver, 118 N. C. 828, 24 S. E. 352.

⁶⁶Robertson v. People, 20 Colo. 279, 38 Pac. 326.

amended in its passage through either house as to change its original purpose."⁶⁷ This was held to refer to the general purpose of the bill and not to the details by which the purpose is manifested and effectuated.⁶⁸ In the absence of constitutional provisions to the contrary, a majority constitutes a quorum and a majority of a quorum may pass a bill.⁶⁹ When the constitution requires a two-thirds vote to pass certain acts, one passed by a less vote is held to be void.⁷⁰ In New York the certificate of the presiding officers that an act was passed by the requisite vote is held to be conclusive, but if the certificate is silent on the question it may be aided by the journals.⁷¹ Where an act had been in operation for ten years and had been acted upon by the courts in a number of cases, the court refused to go back of the enrolled act to see whether it was properly passed.⁷² Where the constitution required that certain acts should be approved by a two-thirds vote of the electors of the state before going into effect, it was held that the court would take judicial notice of the result of the election.⁷³

⁶⁷ Art. 4, sec. 25.

⁶⁸ *State v. Mason*, 155 Mo. 486, 55 S. W. 636.

⁶⁹ *United States v. Ballin*, 144 U. S. 1, 12 S. C. Rep. 507, 36 L. Ed. 321.

⁷⁰ *Allen v. Board of State Auditors*, 122 Mich. 824, 81 N. W. 113, 80 Am. St. Rep. 573, 47 L. R. A. 117; *Palmer v. Zumbrota*, 72 Minn. 266, 75 N. W. 380.

⁷¹ *Rumsey v. New York, etc. R. R. Co.*, 130 N. Y. 88, 28 N. E. 763; *Matter of New York & Long Isl. and Bridge Co.*, 148 N. Y. 540, 42 N. E. 1088.

⁷² *Mitchell v. Campbell*, 19 Ore. 193, 24 Pac. 455

⁷³ *State v. Stearns*, 72 Minn. 200, 75 N. W. 210. The court says: "The validity of this law depends upon whether it received a majority of all the votes cast at the election, not on the subsequent act or omission of the state canvassing board, or of any other officers. For the purpose of determining this fact the court will take judicial notice of the election records, returns and canvass thereof by the state board in the office of the secretary of state, and, if necessary, of the election returns and canvass in the offices of the several county auditors of the state."

CHAPTER III.

VALIDITY OF STATUTES IN GENERAL AND DELEGATION OF THE LEGISLATIVE POWER.

§ 81. **The constitution a limitation — Legislative authority plenary.**— It is universally held that state constitutions are not a grant but a limitation of the legislative power; that the legislature has plenary power of legislation and may pass any law not forbidden by the constitution of the state or of the United States.¹ “Every subject not withdrawn from its authority may be acted upon by that body.”² In creating a legislative department and conferring upon it legislative power, the people must be understood to have

¹Sheppard v. Dowling, 127 Ala. 1, 28 So. 791, 85 Am. St. Rep. 68; Mitchell v. Winkek, 117 Cal. 520, 49 Pac. 579; People v. Richmond, 16 Colo. 274, 26 Pac. 929; In re Kindergarten Schools, 18 Colo. 234, 32 Pac. 422, 19 L. R. A. 469; State v. Bulkeley, 61 Conn. 287, 23 Atl. 186, 14 L. R. A. 657; People v. Thompson, 155 Ill. 451, 40 N. E. 307; People v. Kirk, 162 Ill. 138, 45 N. E. 830, 53 Am. St. Rep. 277; People v. Onahan, 170 Ill. 449, 48 N. E. 1003; Townsend v. State, 147 Ind. 624, 47 N. E. 19, 62 Am. St. Rep. 477, 37 L. R. A. 294; Purnell v. Mann, 105 Ky. 87, 48 S. W. 407; Hughes v. Murdock, 45 La. Ann. 935, 13 So. 182; Ex parte Roberts, 166 Mo. 207, 65 S. W. 726; State v. French, 17 Mont. 54, 41 Pac. 1078, 30 L. R. A. 415; Magneau v. Fremont, 30 Neb. 843, 47 N. W. 280, 27 Am. St. Rep. 436, 9 L. R. A. 786; Koch v. New York, 5 App. Div. 276,

89 N. Y. S. 164; People v. Young, 18 App. Div. 162, 45 N. Y. S. 772; Southern Gum Co. v. Laylin, 66 Ohio St. 578, 64 N. E. 564; State v. Compson, 34 Ore. 25, 54 Pac. 349; Stratton Claimants v. Morris Claimants, 89 Tenn. 497, 15 S. W. 446; McCully v. State, 102 Tenn. 509, 53 S. W. 134, 46 L. R. A. 567; Dayton Coal & Iron Co. v. Barton, 103 Tenn. 604, 53 S. W. 970; Phillips v. Lewis, 3 Tenn. Cas. 230; State v. Brownson, 94 Tex. 436, 61 S. W. 114; Kimball v. Grantsville City, 19 Utah, 368, 57 Pac. 1; State v. Cherry, 22 Utah, 1, 60 Pac. 1103; Prison Ass'n v. Ashby, 93 Va. 667, 25 S. E. 893; Brown v. Epps, 91 Va. 726, 21 S. E. 119, 27 L. R. A. 1076; Northwestern National Bank v. Superior, 103 Wis. 43, 79 N. W. 54; State v. Henderson, 4 Wyo. 535, 35 Pac. 517.

²Wilson v. Sanitary Trustees, 133 Ill. 443, 458, 27 N. E. 203.

conferred the full and complete power as it rests in, and may be exercised by, the sovereign power of any country, subject only to such restrictions as they may have seen fit to impose, and to the limitations which are contained in the constitution of the United States.³ Speaking of the legislative power the supreme court of Utah says: "It is wholly within the discretion of the legislature to determine whether, concerning any subject, such conditions or such facts and circumstances exist as to warrant it to act. It is the sole judge as to whether an exigency or such cause exists as requires the enactment of a law, and, in the absence of any constitutional restriction, if it makes a law there is no authority in the government which can declare it void. Independently of any repugnance between a legislative act and any constitutional limitation or restriction, a court has no power to arrest its execution, however unwise or unjust in the opinion of the court it may be, or whatever motives may have led to its enactment."⁴ Congress is a body with enumerated powers, and can only pass such laws as are within the grant of the federal constitution.⁵

§ 82. **Presumption in favor of validity.**—Every presumption is in favor of the validity of an act of the legislature, and all doubts are resolved in support of the act.⁶ "In

³ In re House Roll No. 284, 31 Neb. 505, 48 N. W. 275.

⁴ Kimball v. Grantsville City, 19 Utah, 268, 383, 57 Pac. 1.

⁵ Brown v. Epps, 91 Va. 726, 21 S. E. 119, 27 L. R. A. 676; Weister v. Hade, 52 Pa. St. 474, 477; People v. Flagg, 46 N. Y. 401.

⁶ State v. Rogers, 107 Ala. 444, 19 So. 909; Ala. Great Southern Ry. Co. v. Reed, 124 Ala. 253, 27 So. 19, 82 Am. St. Rep. 166; In re Madera Irr. Dist., 92 Cal. 296, 28 Pac. 272, 675, 27 Am. St. Rep. 106, 14 L. R. A. 755; Hale v. McGettigan, 114 Cal. 112, 120, 45 Pac. 1049; In re State

Lands, 18 Colo. 359, 32 Pac. 986; United States v. Seymour, 10 App. Cas. (D. C.) 294; Holton v. State, 28 Fla. 303, 9 So. 716; County Com'rs v. Jacksonville, 36 Fla. 196, 18 So. 339; State v. Hocker, 36 Fla. 358, 18 So. 767; State v. Burns, 38 Fla. 367, 21 So. 290; People v. Nelson, 133 Ill. 565, 27 N. E. 217; Harmon v. Chicago, 140 Ill. 374, 396, 29 N. E. 732; People v. Gault, 149 Ill. 39, 36 N. E. 576; Parker v. State, 133 Ind. 178, 33 N. E. 836, 18 L. R. A. 567; State v. Roby, 142 Ind. 168, 41 N. E. 145, 51 Am. St. Rep. 174, 33 L. R. A. 213; State v. Gerhardt, 145 Ind. 439, 44

determining the constitutionality of an act of the legislature, courts always presume in the first place that the act is constitutional. They also presume that the legislature acted with integrity, and with an honest purpose to keep within the restrictions and limitations laid down by the constitution. The legislature is a co-ordinate department of the government, invested with high and responsible duties, and it must be presumed that it has considered and discussed the constitutionality of all measures passed by it.”¹ The unconstitutionality must be clear or the act will be sustained.⁸ Acquiescence in the validity of a statute for many years will have weight, if there is room for doubt.⁹ Constitutional questions will not be considered if there are other

N. E. 469; *Maule Coal Co. v. Parthenheimer*, 155 Ind. 100, 55 N. E. 751; *Smith v. Indianapolis St. Ry. Co.*, 158 Ind. 425, 63 N. E. 849; *In re Pinckney*, 47 Kan. 89, 27 Pac. 179; *Purnell v. Mann*, 105 Ky. 87, 48 S. W. 407; *State v. Capdevielle*, 104 La. 561, 29 So. 215; *State v. Tibbets*, 52 Neb. 228, 71 N. W. 990, 66 Am. St. Rep. 492; *State v. Stewart*, 52 Neb. 243, 71 N. W. 998; *State v. Cornell*, 59 Neb. 417, 81 N. W. 431; *State v. Standard Oil Co.*, 61 Neb. 28, 84 N. W. 413, 87 Am. St. Rep. 449; *State v. Westerfield*, 24 Nev. 29, 49 Pac. 554; *State v. Moore*, 104 N. C. 714, 10 S. E. 143, 17 Am. St. Rep. 696; *Sweet v. Syracuse*, 129 N. Y. 316, 29 N. E. 289; *Fort v. Cummins*, 90 Hun, 481, 36 N. Y. S. 36; *Silberman v. Hay*, 59 Ohio St. 582, 53 N. E. 258; *Deane v. Willamette Bridge Co.*, 22 Ore. 167, 29 Pac. 440, 15 L. R. A. 614; *In re Sugar Notch Bor.*, 192 Pa. St. 349, 48 Atl. 985; *State v. Dist. of Narragansett*, 16 R. I. 424, 16 Atl. 901; *State v. Morgan*, 2 S. D. 82, 48 N. W. 314; *Cole Mfg. Co.*

v. Falls, 90 Tenn. 466, 16 S. W. 1045; *Condon v. Maloney*, 108 Tenn. 82, 65 S. W. 871; *State v. Sopher*, 25 Utah, 318, 71 Pac. 482; *Trehy v. Marye*, 100 Va. 40, 40 S. E. 126; *Young v. Commonwealth*, 101 Va. 853; *Charleston & Southside Bridge Co. v. Kanawha Co. Ct.*, 41 W. Va. 658, 24 S. E. 1002; *South Morgantown v. Morgantown*, 49 W. Va. 729, 40 S. E. 15; *State v. Board of Control*, 85 Minn. 165, 88 N. W. 533; *Buttfield v. Shanahan*, 192 U. S. 470.

¹ *Beach v. Van Detton*, 139 Cal. 462, 78 Pac. 187.

⁸ *Sabin v. Curtis*, 3 Idaho, 662, 32 Pac. 1130; *Kansas City v. Scarritt*, 127 Mo. 642, 29 S. W. 845, 30 S. W. 111; *Sutton v. Phillips*, 116 N. C. 502, 21 S. E. 968; *Cook v. Port of Portland*, 20 Ore. 580, 27 Pac. 263, 13 L. R. A. 533; *Reeves v. Anderson*, 13 Wash. 17, 42 Pac. 625; *Reid v. Colorado*, 187 U. S. 137, 23 S. C. Rep. 92.

⁹ *Cameron v. Chicago, etc. Ry. Co.*, 63 Minn. 384, 65 N. W. 652.

sufficient grounds upon which to rest the decision of the court.¹⁰ Nor will the validity of a statute be passed upon in advance of its taking effect.¹¹

§ 83. Statutes construed, if possible, so as to be valid. Another universal principle applied in considering constitutional questions is, that an act will be so construed, if possible, as to avoid conflict with the constitution,¹² although

¹⁰ Chicago & Southeastern Ry. Co. v. Glover, 159 Ind. 166, 62 N. E. 11; State v. Wright, 159 Ind. 394, 65 N. E. 190; Hart v. State, 159 Ind. 182, 64 N. E. 661; Elliott v. Oliver, 22 Ore. 44, 29 Pac. 1; McDonnell v. De Soto L. & B. Ass'n, 175 Mo. 250, 75 S. W. 438; State v. King, 28 Mont. 268.

¹¹ State v. Superior Court, 25 Wash. 271, 65 Pac. 183.

¹² Bolling v. Le Grand, 87 Ala. 482, 6 So. 332; Chambers v. Solner, 1 Alaska, 271; In re Wynn-Johnson, 1 Alaska, 630; Wells, Fargo & Co. Express v. Crawford Co., 63 Ark. 576, 40 S. W. 710, 37 L. R. A. 371; Dobson v. State, 69 Ark. 376, 63 S. W. 796; Western Granite & Marble Co. v. Knickerbocker, 103 Cal. 111, 37 Pac. 192; San Francisco v. Broderick, 125 Cal. 188, 57 Pac. 887; Park v. Candler, 113 Ga. 647, 39 S. E. 89; People v. Nelson, 133 Ill. 565, 27 N. E. 217; State v. Gerhardt, 145 Ind. 439, 44 N. E. 469; State v. Capdevielle, 104 La. 561, 29 So. 215; Drennen v. Banks, 80 Md. 310, 30 Atl. 655; Garrison v. Hill, 81 Md. 551, 557, 32 Atl. 191; Attorney-General v. Williams, 178 Mass. 330, 59 N. E. 812; Osborn v. Charlevoix Circuit Judge, 114 Mich. 655, 660, 72 N. W. 982; McCormick v. West Duluth, 47 Minn. 272, 50 N. W. 128; State v. Mason, 153 Mo. 23,

54 S. W. 524; Powell v. Sherwood, 162 Mo. 605, 63 S. W. 485; American B. & L. Ass'n v. Rainbolt, 48 Neb. 434, 67 N. W. 493; State v. Atlantic City, 56 N. J. L. 232, 28 Atl. 427; State v. Town of Union, 62 N. J. L. 142, 40 Atl. 632; People v. Terry, 108 N. Y. 1, 14 N. E. 815; Matter of New York & Long Island Bridge Co., 148 N. Y. 540, 42 N. E. 1088; Bohmer v. Haffen, 161 N. Y. 890, 55 N. E. 1047; Sugden v. Partridge, 174 N. Y. 87, 66 N. E. 655; Koelesch v. New York, 34 App. Div. 98, 54 N. Y. S. 110; Northrop v. Hoyt, 31 Ore. 524, 49 Pac. 754; Henry v. Henry, 31 S. C. 2, 9 S. E. 726; Segars v. Parrott, 54 S. C. 1, 31 S. E. 677, 865; Dugger v. Ins. Co., 95 Tenn. 245, 32 S. W. 5, 28 L. R. A. 796; State v. Schlitz Brewing Co., 104 Tenn. 715, 59 S. W. 1033, 78 Am. St. Rep. 941; Johnson v. Harriscorn, 90 Tex. 321, 38 S. W. 761; Madden v. Hardy, 92 Tex. 613, 50 S. W. 926; Searcy v. State, 40 Tex. Crim. App. 460, 50 S. W. 699, 51 S. W. 1119, 53 S. W. 344; Martin v. South Salem Land Co., 94 Va. 28, 26 S. E. 591; State v. Workman, 35 W. Va. 367, 14 S. E. 9, 14 L. R. A. 600; Brown v. Point Pleasant, 36 W. Va. 290, 15 S. E. 209; Johnson v. Milwaukee, 88 Wis. 383, 60 N. W. 270; State v. Stevens, 112 Wis. 170, 88 N. W. 48; Patapsco

such a construction may not be the most obvious or natural one.¹³ "The courts may resort to an implication to sustain a statute, but not to destroy it."¹⁴ But the courts cannot go beyond the province of legitimate construction, in order to save a statute; and where the meaning is plain, words cannot be read into it or out of it for that purpose.¹⁵

§ 84. **Fraud or conspiracy in passing act.**—An act will not be declared invalid because its passage was procured by fraud and imposition practiced on the legislature,¹⁶ or because it was the result of a conspiracy between members of the legislature and outside parties,¹⁷ or of improper motives actuating the legislature.¹⁸ The courts will not inquire into charges of this nature, and will conclusively presume that the legislature acted honestly and understandingly. In one case it is said that "the motives which induced legislative action are not a subject of judicial inquiry; and a legislative act cannot be declared unconstitutional because, in the opinion of a court, it was or might have been the result of improper considerations. A court is neither a director of the discretion of a legislator, nor the keeper of his conscience."¹⁹

§ 85. **Considerations of the justice, wisdom and policy of statutes — Spirit of the constitution.**—Statutes cannot be declared invalid on the ground that they are unwise, un-

Guano Co. v. North Carolina, 171 U. S. 345, 18 S. C. Rep. 862, 43 L. Ed. 191; *Knights Templars & Masons Life Indem. Co. v. Jarman*, 187 U. S. 197, 23 S. C. Rep. 108; *Bates v. Bratton*, 96 Tex. 279, 72 S. W. 157.

¹³ *State v. Smith*, 35 Neb. 13, 52 N. W. 700; *State v. Atlantic City*, 56 N. J. L. 232, 28 Atl. 427.

¹⁴ *Atlantic Water Works Co. v. Consumers Water Co.*, 44 N. J. Eq. 427, 15 Atl. 581.

¹⁵ *Rogers-Ruger Co. v. Murray*, 115 Wis. 267, 91 N. W. 657.

¹⁶ *Smith v. Crutcher*, 92 Ky. 586,

18 S. W. 521; *Walters v. Richardson*, 93 Ky. 374, 20 S. W. 279.

¹⁷ *Eichholtz v. Martin*, 58 Kan. 486, 36 Pac. 1064; *Williams v. Nashville*, 89 Tenn. 487, 15 S. W. 364.

¹⁸ *People v. Carlock*, 198 Ill. 150, 65 N. E. 109; *Parker v. Powell*, 132 Ind. 419, 31 N. E. 1114; *State v. Bershoff*, 158 Ind. 849, 63 N. E. 717; *Commonwealth v. Moir*, 199 Pa. St. 534, 543, 49 Atl. 351, 85 Am. St. Rep. 801.

¹⁹ *People v. Glenn County*, 100 Cal. 419, 35 Pac. 302, 38 Am. St. Rep. 305. "Nor can the courts annul

just, unreasonable or immoral, or because opposed to public policy, or the spirit of the constitution. Unless a statute violates some express provision of the constitution, it must be held to be valid. These principles are supported by numerous authorities, some of which are referred to in the margin.²⁰

“An act cannot be annulled because, in the opinion of the court, it violates the best public policy, or does violence to some natural equity, or interferes with the inherent rights of freemen, nor upon the idea that it is opposed to some

a statute because the legislature passing it was imposed upon and misled by a few of its members in conjunction with interested third parties. . . . The courts have nothing to do with the policy of legislation nor the motives with which it is made.” *Williams v. Nashville*, 89 Tenn. 487, 15 S. W. 364.

²⁰ *Territory v. Connell*, 2 Ariz. 339, 16 Pac. 209; *Carson v. St. Francis Levee Dist.*, 59 Ark. 513, 27 S. W. 590; *Hellman v. Shoulters*, 114 Cal. 136, 45 Pac. 1068; *Praigg v. Western Paving & Supply Co.*, 143 Ind. 358, 42 N. E. 750; *State v. Gerhardt*, 145 Ind. 439, 44 N. E. 469; *Purnell v. Mann*, 105 Ky. 87, 48 S. W. 407; *Burrows v. Delta Trans. Co.*, 106 Mich. 582, 64 N. W. 501, 29 L. R. A. 468; *State v. Corbett*, 57 Minn. 345, 59 N. W. 317, 24 L. R. A. 498; *State v. Mrozinski*, 59 Minn. 465, 61 N. W. 560, 27 L. R. A. 76; *State v. Board of Control*, 85 Minn. 165, 88 N. W. 533; *State v. Heldenbrand*, 62 Neb. 136, 87 N. W. 25, 89 Am. St. Rep. 743; *Sawyer v. Dooley*, 21 Nev. 390, 32 Pac. 437; *Tribune Printing & B. Co. v. Barnes*, 7 N. D. 591, 75 N. W. 904; *Henderson v. Dowd*, 116 N. C. 795, 21 S. E. 692; *Probasco v. Raine*,

50 Ohio St. 378, 84 N. E. 536; *Commonwealth v. Moir*, 199 Pa. St. 534, 49 Atl. 351, 85 Am. St. Rep. 801; *Crafts v. Ray*, 22 R. I. 179, 46 Atl. 1048, 49 L. R. A. 604; *State v. Becker*, 3 S. D. 29, 51 N. W. 1018; *Stratton Claimants v. Morris Claimants*, 89 Tenn. 497, 15 S. W. 446; *Hurley v. State*, 98 Tenn. 665, 41 S. W. 352; *McCully v. State*, 102 Tenn. 509, 53 S. W. 134, 46 L. R. A. 567; *Leeper v. State*, 103 Tenn. 500, 53 S. W. 962, 48 L. R. A. 167; *Dayton Coal & Iron Co. v. Barton*, 103 Tenn. 604, 53 S. W. 970; *State v. Lindsay*, 103 Tenn. 625, 53 S. W. 950; *Lytle v. Haff*, 75 Tex. 128, 12 S. W. 610; *Harris County v. Stewart*, 91 Tex. 133, 41 S. W. 650; *Kimball v. Grantsville City*, 19 Utah, 368, 57 Pac. 1; *Prison Ass'n v. Ashby*, 93 Va. 667, 25 S. E. 898; *State v. Cunningham*, 81 Wis. 440, 51 N. W. 724, 15 L. R. A. 561; *Cope v. Cope*, 137 U. S. 682, 11 S. C. Rep. 222, 34 L. Ed. 832; *Vie-meister v. White*, 88 App. Div. 44; *Ex parte Wilbarger*, 41 Tex. Crim. Rep. 514, 55 S. W. 968; *State v. Sharpless*, 31 Wash. 191, 71 Pac. 737; *Julien v. Model B. & L. Ass'n*, 116 Wis. 79, 92 N. W. 561; *Dewey v. United States*, 178 U. S. 510, 20 S. C. Rep. 931, 44 L. Ed. 1170.

spirit of the constitution not expressed in its words, nor because it is contrary to the genius of a free people, and hence the wisdom, policy and desirability of such acts are matters addressed to the general assembly, and must rest upon the intelligence, patriotism and wisdom of that body, and not upon the judgment of the court."²¹ The supreme court of Ohio, speaking on the same subject, says: "Whatever may be the rule elsewhere, it is clear that in this state the validity of an act passed by the legislature must be tested alone by the constitution, and the courts have no right or power to nullify a statute upon the ground that it is against natural justice or public policy. When the legislature is silent, the courts may declare the public policy, and mark out the lines of natural justice; but when the legislature has spoken, within the powers conferred by the constitution, its duly enacted statutes form the public policy, and prescribe the rights of the people, and such statutes must be enforced and not nullified by the judicial and executive departments of the state. When the legislature, within the powers conferred by the constitution, has declared the public policy and fixed the rights of the people by statute, the courts cannot declare a different policy or fix different rights. In this regard the legislature is supreme, and the presumption is that it will do no wrong and will pass no unjust laws. The remedy, if any is needed, is with the people and not with the courts."²²

²¹ McCully v. State, 102 Tenn. 509, 551, 53 S. W. 134, 46 L. R. A. 567.

²² Probasco v. Raine, 50 Ohio St. 378, 390, 391, 34 N. E. 536. And so the supreme court of Minnesota:

"Furthermore, courts are not at liberty to declare a statute unconstitutional because, in their opinion, it is opposed to the fundamental principles of republican government, unless those principles are placed beyond legislative encroachment by the constitution; or

because it is opposed to a spirit supposed to pervade the constitution, but not expressed in words, or because it is thought to be unjust or oppressive, or to violate some natural, social or political rights of the citizen, unless it can be shown that such injustice is prohibited or such rights are protected by the constitution.

"Except where the constitution has imposed limitations upon the legislative power, it must be con-

In *State v. Moores* an act of the legislature of Nebraska, providing for a board of fire and police commissioners for the city of Omaha, to consist of the governor and four electors of the city appointed by the governor, was held invalid as violating an implied constitutional right of local self-government.²³ This case was subsequently overruled, and

considered as practically absolute; and to warrant the judiciary in declaring a statute invalid they must be able to point out some constitutional limitation which the act clearly transcends." *State v. Corbett*, 57 Minn. 345, 59 N. W. 317, 24 L. R. A. 498. Similar language will be found in *State v. Gerhardt*, 145 Ind. 439, 44 N. E. 469, and *Commonwealth v. Moir*, 199 Pa. St. 534, 49 Atl. 351. 85 Am. St. Rep. 801.

²³ 55 Neb. 480, 76 N. W. 175. The court says: "The validity of the law is assailed on the ground that it is violative of the inherent right of local self-government, by depriving the people of cities of the metropolitan class from choosing their own officers. There is no express provision in the constitution of this state which gives municipal corporations the power to select their officers or to manage their own affairs, nor is there any clause to be found in that instrument which in express terms inhibits the legislature from conferring upon the governor the power to appoint municipal officers to manage and control purely local affairs. If this act is invalid on the ground that the appointing power was placed in the hands of the governor, it is because the law is repugnant to some right retained by the people at the time of the

adoption of the organic law. It is true the state constitution is not a grant of legislative power, and the law-making power may legislate upon any subject not inhibited by the fundamental law, as has been held in *Magneau v. City of Fremont*, 30 Neb. 848, and numerous other decisions of this court. But it by no means follows from this that the legislature is free to pass laws upon any subject unless in express terms prohibited by the constitution. The inhibition on the power of the legislature may be by implication as well as by expression. Laws may be, and have been, declared invalid although not repugnant to any express restriction contained in the fundamental law. . . . It cannot be successfully asserted that the only rights reserved to the people are those enumerated in said article of the constitution (the bill of rights), since section 26 thereof provides: 'This enumeration of rights shall not be construed to impair and deny others retained by the people, and all powers not herein delegated remain with the people.' This language removes all doubt that powers other than those specified in the bill of rights were retained by the people, and any statute enacted in violation of such rights is as clearly invalid as

the law in question held valid;²⁴ and it has been said that the decision overruled was without support in the books.²⁵

§ 86. **When statutes void for uncertainty.**—It is inevitable that some statutes should come from the hands of the legislature with imperfections of various sorts. These imperfections may relate to minor matters, such as grammar, punctuation or rhetoric, or they may relate to substantial matters in the form of omissions, ambiguities and contradictions. It is undoubtedly the duty of a court to so construe a statute as to give it a sensible effect and make it of binding force.²⁶ “A statute cannot be held void for uncertainty, if any reasonable and practical construction can be given to its language. Mere difficulty in ascertaining its meaning or the fact that it is susceptible of different interpretations will not render it nugatory. Doubts as to its proper construction will not justify us in disregarding it. It is the bounden duty of courts to endeavor by every rule of construction to ascertain the meaning of, and to give full force and effect to, every enactment of the general assembly not

though the same had been expressly forbidden by the fundamental law.”

“The right of local self-government is not forbidden by the constitution, while the principle is fully recognized in that instrument, and its framers must have contemplated that the right then existing of municipal corporations to choose their local officers to administer their local affairs should continue as in the past. This right still exists, and the legislature is powerless to abridge the same or take it away.”

The following cases also lend some support to the same view: *Britton v. Board of Election Commissioners*, 129 Cal. 337, 61 Pac.

1115, 51 L. R. A. 115; *Attorney-General v. Detroit*, 78 Mich. 545, 44 N. W. 388, 18 Am. St. Rep. 458.

²⁴ *Redell v. Moores*, 63 Neb. 219, 88 N. W. 243. A similar law was attacked on the same grounds and held valid in *Americus v. Perry*, 114 Ga. 871, 40 S. E. 1004.

²⁵ *Newport v. Horton* (R. L.), 50 L. R. A. 330.

²⁶ *Pennsylvania Co. v. State*, 142 Ind. 423, 41 N. E. 937; *St. Louis Dalles Imp. Co. v. Nelson Lumber Co.*, 43 Minn. 130, 44 N. W. 1080; *Warren County v. Nall*, 78 Miss. 726, 29 So. 755; *Hilburn v. St. Paul, etc. Ry. Co.*, 23 Mont. 229, 58 Pac. 515, 811; *Lloyd v. Dollison*, 13 Ohio C. D. 571.

obnoxious to constitutional prohibitions."²⁷ But if, after exhausting every rule of construction, no sensible meaning can be given to the statute, or if it is so incomplete that it cannot be carried into effect, it must be pronounced inoperative and void.²⁸ A statute which prohibited the hauling of more than two thousand pounds on a narrow-tired wagon, or more than twenty-five hundred pounds on a broad-tired wagon, was held void for uncertainty, because it fixed no standard for determining what was a broad, or what a narrow, tire.²⁹ So of a statute authorizing the state board of health to revoke a physician's certificate for "grossly unprofessional conduct of a character likely to deceive or defraud

²⁷ *State v. West Side St. Ry. Co.*, 146 Mo. 155, 47 S. W. 959.

²⁸ *State v. Ashbrook*, 154 Mo. 875, 55 S. W. 627, 77 Am. St. Rep. 776; *State v. West Side St. Ry. Co.*, 146 Mo. 155, 47 S. W. 959. In the latter case the court says: "An act of the legislature, to be enforceable as a law, must prescribe a rule of action, and such rule must be intelligibly expressed. . . . It is manifest that an act of the legislative department cannot be enforced, when its meaning cannot be determined by any known rules of construction. The courts cannot venture upon the dangerous path of judicial legislation to supply omissions, or, remedy defects in matters committed to a co-ordinate branch of the government. It is far better to wait for necessary corrections by those authorized to make them, or, in fact, for them to remain unmade, however desirable they may be, than for judicial tribunals to transcend the just limits of their constitutional powers." p. 169.

Statutes were held void for un-

certainty in the following cases: *In re House Resolution*, 12 Colo. 859, 21 Pac. 485; *People v. Taylor*, 96 Mich. 576, 56 N. W. 27, 21 L. R. A. 287; *State v. Rumberg*, 86 Minn. 399, 90 N. W. 1055, 1133; *State v. West Side St. Ry. Co.*, 146 Mo. 155, 47 S. W. 959; *State v. Brinkman*, 7 Ohio C. C. 165; *Commonwealth v. Junker*, 7 Pa. Dist. Ct. 125.

In the following cases acts claimed to be void for uncertainty were sustained: *Pennsylvania Co. v. State*, 142 Ind. 428, 41 N. E. 937; *Stow v. Grand Rapids*, 79 Mich. 595, 44 N. W. 1047; *McPherson v. Blocker*, 92 Mich. 377, 52 N. W. 469, 81 Am. St. Rep. 587, 16 L. R. A. 475; *Fisher v. Wineman*, 125 Mich. 642, 84 N. W. 1111; *St. Louis Dalles Imp. Co. v. Nelson Lumber Co.*, 43 Minn. 130, 44 N. W. 1080; *Davis v. State*, 51 Neb. 301, 70 N. W. 984; *State v. Aitken*, 62 Neb. 428, 87 N. W. 153; *Huyser v. Commonwealth*, 25 Ky. L. R. 608. And see *Cowan v. East Tenn. etc. R. R. Co.*, 2 Tenn. Cas. 102.

²⁹ *Cook v. State*, 26 Ind. App. 278, 59 N. E. 489.

the public,"³⁰ and one punishing the larceny of a dog as in other cases of larceny, without saying whether it should be as in grand larceny or in petit larceny.³¹ A statute that if any officer charged with the collection, receipt or safe-keeping of public money belonging to the state or to any county, etc., shall convert to his own use, every such act should be deemed an embezzlement, etc., was held void and ineffectual, because it did not specify what must be converted to constitute the crime.³² An act authorizing school districts by popular vote to levy a special tax for certain purposes was held void because no way was prescribed by which it could be carried into effect.³³ An act of Kansas created a county court in Douglas county, provided for the appointment of a judge by the governor within twenty days from its passage, took away the jurisdiction of justices of the peace in the city of Lawrence, except in civil suits where the amount involved did not exceed one dollar exclusive of interest and costs, repealed all inconsistent acts, and by one provision was to go into effect after its passage and publication. By section 8 of the act it was provided that the question of establishing such court should be submitted to the electors of the county by the county commissioners at the next general election, and if the vote was favorable then the governor should appoint the judge. The act was held inoperative and void "because of the absolute contradiction between its principal provisions."³⁴ A statute that "if any railroad corporation shall charge, collect or receive more than a just

³⁰ *Matthews v. Murphy*, 23 Ky. L. Rep. 750, 63 S. W. 785.

³¹ *Johnston v. State*, 100 Ala. 32, 14 So. 629.

³² *State v. Taylor*, 7 S. D. 533, 64 N. W. 548.

³³ *Hilburn v. St. Paul, etc. Ry. Co.*, 23 Mont. 229, 58 Pac. 515, 811.

The court says: "So, if an act of the legislature is so vague and uncertain in its terms as to convey no

meaning; or, if the means for carrying out its provisions are not adequate or effective; or if it is so conflicting and inconsistent in its provisions that it cannot be executed, it is incumbent on the courts to declare it void and inoperative." p. 241.

³⁴ *In re Hendricks*, 60 Kan. 796, 57 Pac. 965.

or reasonable rate of toll or compensation for the transportation of passengers or freight," it should be deemed guilty of extortion, was held void for uncertainty in Kentucky, for lack of prescribing any standard by which to determine what was just and reasonable;³⁵ but a similar statute was upheld in Iowa.³⁶

An act to punish those guilty of *disturbing* religious worship and an act prohibiting the sale of intoxicating liquors, with a proviso that it should not affect the right of manufacturers to sell in *wholesale quantities*, were held not invalid by reason of any indefiniteness in the words italicised.³⁷ An act fixing a minimum penalty of both fine and imprisonment was held not bad for uncertainty because it fixed no maximum, and it was held that it could at least be enforced

³⁵ Louisville & Nashville R. R. Co. v. Commonwealth, 99 Ky. 132, 35 S. W. 129, 59 Am. St. Rep. 457, 33 L. R. A. 209. The court says: "That this statute leaves uncertain what shall be deemed 'a just and reasonable rate of toll or compensation' cannot be denied, and that different juries might reach different conclusions on the same testimony, as to whether or not an offense has been committed, must also be conceded. The criminality of the carrier's act, therefore, depends upon the jury's view of the reasonableness of the rate charged; and this latter depends on many uncertain and complicated elements. . . . There is no standard whatever fixed by the statute, or attempted to be fixed, by which the carrier may regulate its conduct; and it seems clear to us to be utterly repugnant to our system of laws to punish a person for an act, the criminality of which depends not on any standard

erected by the law which may be known in advance, but on one erected by a jury. And especially so as that standard must be as variable and uncertain as the views of different juries may suggest, and as to which nothing can be known until after the commission of the crime." pp. 136, 137.

There was the same ruling in the same state upon a statute making it penal "for any corporation to make or give any undue or unreasonable preference or advantage to any particular person or locality or any particular description of traffic" in the matter of transportation. Commonwealth v. Louisville & N. R. R. Co., 20 Ky. L. Rep. 491, 46 S. W. 700.

³⁶ Burlington, C. R. & N. Ry. Co. v. Dey, 82 Iowa, 312, 48 N. W. 98, 31 Am. St. Rep. 477, 12 L. R. A. 436.

³⁷ State v. Stirth, 11 Wash. 423, 39 Pac. 665; Lloyd v. Dollison, 18 Ohio C. D. 571.

to the extent of the minimum.³⁸ A statute giving plaintiff's attorneys a lien on the plaintiff's right of action was held not to be void because no provision was made for enforcing the lien, and it was held the lien would be enforced under the general law relating to liens.³⁹ An act granted to a county the swamp lands in the county in consideration of the construction and maintenance of levees along the Mississippi river in the county, and authorized the police jury of the county to sell and dispose of the land and make title thereto, provided that the county should not have or sell more than fifty thousand acres under the provisions of the act. There were fifty-six thousand acres of swamp lands in the county, and it was claimed that the act was void for uncertainty because the part granted was not defined. But the court construed it as a grant of fifty thousand acres to be selected by the police jury and sustained the act.⁴⁰ A Missouri statute required every electric car to be provided during specified months at the front end with a screen for the protection of the motorman and imposed a penalty for non-compliance. The statute did not say who should provide the screen, but the court held it to be implied that it was the duty of the owner to do so.⁴¹ An amendatory act provided that "any person who shall unlawfully and carnally know and abuse any female child under the age of fourteen years shall be punished by imprisonment in the state prison during his natural life." The court held that when considered in connection with the statutes as to fornication, adultery, seduction, rape and incest, the intent of the legislature was so uncertain that the act was void.⁴²

In one case the two houses were at loggerheads over the appropriation bill for the forty-second and forty-third fiscal

³⁸ *State v. Fackler*, 91 Wis. 418, 64 N. W. 1029.

³⁹ *Illinois Central R. R. Co. v. Wells*, 104 Tenn. 706, 59 S. W. 1041.

⁴⁰ *Warren County v. Noll*, 78 Miss. 726, 29 So. 755.

⁴¹ *State v. Whitaker*, 160 Mo. 59, 60 S. W. 1068.

⁴² *State v. Wentler*, 76 Wis. 89, 44 N. W. 841.

years. The pending bill consisted mainly of two sections, section 1 making the appropriations for the forty-second year and section 2 making the appropriations for the forty-third year. A conference committee was appointed on the last day of the session and it agreed upon a report and rewrote section 1 of the bill, but did not have time, within the limit of the session, to rewrite section 2. Accordingly between section 1 as rewritten and old section 2 they inserted the following: "The amendments in section 2 coincide with those of preceding section throughout, and amendments and notes to be changed to the same." In this condition the bill was passed and the court sustained it, holding that that was certain which could be made certain, and that by means of section 1 and the above memorandum section 2 could be read as intended by the legislature.⁴³

§ 87 (67). **The legislative power cannot be delegated.**—The power to make laws for a state vested in the legislature is a sovereign power, requiring the exercise of judgment and discretion. It is a delegated power,—delegated in a constitution by the people in whom inherently are all the powers. On common-law principles, as well as by settled constitutional law, it is a power which cannot be delegated.⁴⁴

⁴³ *Territory v. Prince*, 6 N. M. 635, 30 Pac. 934.

⁴⁴ *Carlisle v. Carlisle's Adm'r*, 2 Harr. 318; *Berger v. Duff*, 4 John. Ch. 368; *Hunt v. Burrell*, 5 John. 137; *Farnsworth v. Lisbon*, 62 Me. 451; *Brewer v. Brewer*, id. 62; *State v. Hudson County*, 37 N. J. L. 12; *State v. Copeland*, 3 R. L. 33; *Willis v. Owen*, 43 Tex. 41; *People v. Collins*, 3 Mich. 343; *Rice v. Foster*, 4 Harr. 479; *State v. Parker*, 26 Vt. 362; *Lockes' Appeal*, 72 Pa. St. 491; *Parker v. Commonwealth*, 6 id. 507, 47 Am. Dec. 480; *State v. Swisher*, 17 Tex. 441; *Barto v. Himrod*, 8 N.

Y. 483; *People v. Stout*, 23 Barb. 349; *Thorne v. Cramer*, 15 Barb. 112; *Bradley v. Baxter*, id. 122; *State v. Wilcox*, 45 Mo. 458; *Santo v. State*, 2 Iowa, 165; *Ex parte Wall*, 48 Cal. 279, 17 Am. Rep. 425; *Geobrick v. State*, 5 Iowa, 491; *State v. Beneke*, 9 id. 203; *State v. Weir*, 33 id. 134, 11 Am. Rep. 115; *Commonwealth v. McWilliams*, 11 Pa. St. 61; *Maize v. State*, 4 Ind. 342; *Meshmeier v. State*, 11 id. 482; *Cincinnati, etc. R. R. Co. v. Commissioners*, 1 Ohio St. 77; *Cooley's Con. Lim.* 142; *Slinger v. Henneman*, 38 Wis. 504; *Wayman v. Southard*, 10

This is a general rule or maxim; but like all other rules of the common law it is flexible, extending as far as the reason and principles on which it is founded go, and ceasing when the reason ceases. It admits of exceptions connected with the principle which supports the rule, or which may be presumed to have been intended by the party or people who are the original source of the power.

§ 88 (68). The legislative department as an integral part of our political system is confined to the exercise of its proper powers, and possesses them exclusively, as the other departments severally have theirs. As the possessor of the law-making power, it may confer authority and impose duties upon the others and regulate the exercise of their several functions. It may pass general laws for that purpose, giving them expressly or by necessary implication an incidental discretion to employ the proper means to fill up and regulate the details for themselves and subordinates, though the exercise of that discretion be *quasi* legislative. This is illustrated by laws empowering the courts in the exercise of their jurisdiction to adopt rules of practice and forms of procedure;⁴⁵ and by the powers granted to the president in such cases as that disclosed in *Houston v.*

Wheat. 1, 42, 6 L. Ed. 253; *Alcorn v. Hamer*, 38 Miss. 652; *Senate of Happy Homes Club v. Supervisors*, 99 Mich. 117, 57 N. W. 1101, 23 L. R. A. 144; *Doherty v. Ransome County*, 5 N. D. 1, 63 N. W. 148. And see cases cited in following sections.

In an English case, *National Telephone Co. v. Baker*, (1893) 2 Ch. 186, 203, it is said: "It is within the competence of the legislature to delegate its authority; and, when once that delegated authority has been properly exercised by the agent to whom it is intrusted, the sanction is that of the legislature itself, just as much as if it had been expressed in the

first instance in an act of parliament."

⁴⁵ *Wayman v. Southard*, 10 Wheat. 1, 6 L. Ed. 253; *Bank of United States v. Halstead*, 10 Wheat. 51, 6 L. Ed. 264; *Coleman v. Newby*, 7 Kan. 88; *Anderson v. Levely*, 58 Md. 192; *Thompson v. Floyd*, 2 Jones' L. 313; *Ross v. Duval*, 13 Pet. 45, 10 L. Ed. 51.

In *Wayman v. Southard*, *supra*, Marshall, C. J., said: "It will not be contended that congress can delegate to the courts, or to any other tribunal, powers which are strictly and exclusively legislative. But congress may certainly delegate to others powers which the legislature may rightfully exercise itself.

Moore.⁴⁶ An act of congress authorized the president in certain exigencies to call forth such number of the militia of the states most convenient to the scene of action as he might judge necessary, and to issue his orders for that pur-

Without going further for examples, we will take that the legality of which the counsel for the defendants admit. The seventeenth section of the judiciary act, and the seventh section of the additional act, empower the courts respectively to regulate their practice. It certainly will not be contended that this might not be done by congress. The courts, for example, may make rules directing the returning of writs and processes, the filing of declarations and other pleadings, and other things of the same description. It will not be contended that these things might not be done by the legislature without the intervention of the courts; yet it is not alleged that the power may not be conferred on the judicial department.

"The line has not been exactly drawn which separates those important subjects which must be entirely regulated by the legislature itself, from those of less interest, in which a general provision may be made, and a general power given to those who are to act under such general provisions to fill up the details. The seventeenth section of the judiciary act of 1787, ch. 20, enacted 'That all the said courts shall have power to make and establish all necessary rules for the orderly conducting business in the said courts, provided such rules are not

repugnant to the laws of the United States;' and the seventh section of the act, referred to as the additional act (act 1793, ch. 22, § 7), details more at large the powers conferred by the seventeenth section of the judiciary act. These sections were held to give the court full jurisdiction over all matters of practice." The question in this case related to execution.

"A general superintendence," say the court, "over this subject seems to be properly within the judicial province, and has always been so considered. It is, undoubtedly, proper for the legislature to prescribe the manner in which these ministerial offices shall be performed, and this duty will never be devolved on any other department without urgent reasons. But in the mode of obeying the mandate of a writ issuing from a court, so much of that which may be done by the judiciary, under the authority of the legislature, seems to be blended with that for which the legislature must expressly and directly provide, that there is some difficulty in discerning the exact limits within which the legislature may avail itself of the agency of its courts. The difference between the departments undoubtedly is, that the legislature makes, the executive executes, and the judiciary construes the law;

⁴⁶ 5 Wheat. 1, 5 L. Ed. 19.

pose to such officers of the militia as he should think proper.⁴⁷ It prescribed a punishment for failing to obey the orders of the president as an offense against the laws of the United States.⁴⁸ Another conspicuous example of such discretion confided to the president was the act of congress in 1863 empowering him to suspend the writ of *habeas corpus*.⁴⁹

The true distinction is between the delegation of power to make the law, which involves a discretion as to what the law shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.⁵⁰

§ 89 (69). What is a delegation of legislative power — Authority to make rules and regulations.— The constitution vests this power in the legislature; it must there remain by force of the constitution. It is exclusively vested in the legislature. The legislature cannot divest itself of

but the maker of the law may commit something to the discretion of the other departments, and the precise boundary of this power is a subject of delicate and difficult inquiry, into which a court will not enter unnecessarily."

In *Coleman v. Newby*, 7 Kan. 88, Valentine, J., said: "If the legislature says that the district courts shall, in certain cases, be clothed with certain discretionary power, where does the supreme court get authority to say that the district court shall not be clothed with such discretionary power by making rules limiting that discretion? It is not in the nature of things for one court to exercise discretion for another court; and if it cannot, who shall say that it can, as a judicial act or otherwise, make rules limiting or regulating the decision of another court? An attempt to

do so is an attempt to legislate. It is claimed, however, that the legislature have authorized the supreme court to make rules for the district court; but this the legislature could not do if they would. The making of rules is not a subject of judicial power, as has already been shown; and the legislature cannot bring under the judicial power a matter which from its nature is not a subject for judicial determination." *Murray v. Hoboken Land Imp. Co.*, 18 How. 284; *Auditor of State v. A., T. & S. Fe R. R. Co.*, 6 Kan. 500, 7 Am. Rep. 575.

⁴⁷ Act 2d May, 1862.

⁴⁸ In re Griner, 16 Wis. 423.

⁴⁹ In re Oliver, 17 Wis. 681; *Coe v. Schultz*, 47 Barb. 64; *Hildreth v. Crawford*, 65 Iowa, 339, 21 N. W. 667.

⁵⁰ *Cincinnati, etc. R. R. Co. v. Commissioners*, 1 Ohio St. 77.

the power, nor impart it to others, except in accordance with this distinction, though there are some recognized exceptions which will presently be considered. Legislative power is delegated contrary to the maxim stated when the legislature attempts to confer on others a power of substantive legislation, to be exercised independently or in conjunction with the legislature, or when it constitutes an inferior legislature or law-making body. At the same time it is necessary for the legislature to confer more or less of discretion upon executive and administrative officers in applying a law and carrying it into effect, and in many cases it is expedient to vest in such officers more or less of power to make rules and regulations for the purpose of applying and executing the law. It is, perhaps, impossible to lay down any general rule by which it may be certainly and readily determined whether such a law is or is not an unlawful delegation of legislative power.⁵¹ A statute of Massachusetts conferred power upon the board of metropolitan park commissioners to make rules and regulations for the government and use of the roadways and boulevards under its care and provided that breaches of such rules and regulations should be deemed breaches of the peace and should be punishable as such in any court having jurisdiction of the same. This was held not to be an unlawful delegation of legislative power, and, after referring to the exception to the general rule in case of municipalities, the court proceeds as follows: "In this commonwealth legislation has gone further than this. Apparently on grounds of expediency amounting almost to necessity, the making of rules and regulations for the preservation of the public health has

⁵¹ In *State v. Gloucester County*, 50 N. J. L. 585, 594, 15 Atl. 272, the court says: "When we recur to the fact that the power of eminent domain has been delegated to railroads and other corporations without challenge; that the important power of taxation and all the pow-

ers of local government have, for more than three generations, been delegated in our state, we are admonished not to be too confident in asserting where the precise limitation is upon the competency of the legislature to delegate powers of government."

been intrusted to boards of health in towns as well as in cities, and to a state board of health, and a violation of rules established by city or town boards has long been and is now punishable in the courts. The validity of these statutes, which has long been recognized, stands upon one or both of two grounds. They may be considered as being within the principle permitting local self-government as to such matters, the board of health being treated as properly representing the inhabitants in making regulations, which often are needed at short notice and which could not well be made, in all kinds of cases, by the voters in town meeting assembled. Perhaps some of these statutes may also be justified constitutionally on the ground that the work of the board of health is only a determination of details in the nature of administration, which may be by a board appointed for that purpose, and that the substantive legislation is that part of the statute which prescribes a penalty for the disobedience of the rules which they make as agents performing executive and administrative duties."⁵²

A law of the same state conferring upon the board of police of Boston power to make rules and regulations concerning itinerant musicians was also sustained.⁵³ Laws conferring similar powers upon state and local boards of health in the administration of the health laws have generally been held valid.⁵⁴ An act of congress authorized the secretary

⁵² *Brodline v. Revere*, 182 Mass. 598, 66 N. E. 607.

⁵³ *Commonwealth v. Plaisted*, 148 Mass. 375, 19 N. E. 224.

⁵⁴ *Blue v. Beach*, 155 Ind. 121, 56 N. E. 89, 80 Am. St. Rep. 195, 50 L. R. A. 64; *Isenhour v. State*, 157 Ind. 517, 62 N. E. 40, 87 Am. St. Rep. 228; *Hurst v. Warner*, 102 Mich. 238, 60 N. W. 440, 47 Am. St. Rep. 525, 26 L. R. A. 484. *Isenhour v. State* arose out of the pure food law of Indiana which required the state board of health to prepare rules

regulating the minimum standards of foods, defining specific adulterations, etc. The claim was that the act could have no effect until the board acted and that the rules were legislation. The court says: "That which is required of the state board of health has no semblance to legislation. It merely relates to a procedure in the law's execution for a reliable and uniform ascertainment of the subjects upon which the law is intended to operate. . . . The peculiar character of the subject,

of the interior in his superintendence of forest reservations to make such rules and regulations for their occupancy and use as would preserve the forests thereon and insure the objects of such reservations and made the violation of such rules a criminal offense. This was held to be a valid law by the court of appeals.⁵⁵ But where the act conferred power to make the rule and fix the penalty for its violation, it was held void on account of the latter feature.⁵⁶ A statute of Wisconsin authorized the state board of health "to make such rules and regulations and to take such measures as may, in its judgment, be necessary for the protection of the people from Asiatic cholera or other dangerous contagious diseases," and provided that dangerous and contagious diseases as used in the act should be construed to mean such diseases as the board should designate as contagious and dangerous. The law was drawn in question in a rule of the board requiring a certificate of vaccination as a condition of attending the public schools. It was held void as a delegation of legislative power.⁵⁷

embodying as it does considerations of sanitary science, is such as to require for just legal control something more than legislative wisdom, to designate accurately the subjects and instances intended to be affected. The classification of these subjects, and the prescribing of rules by which they may be determined by a qualified agent, is not legislation, but merely the exercise of administrative power. The law itself is complete and effective in all its parts. In respect to the matters to be determined by the state board of health in its execution, it awaits the performance of these duties. When performed the law operates upon the things done by the board. While unperformed, the law remains ready to be applied whenever the prelimi-

nary conditions exist." p. 522. See *Ex parte McNulty*, 77 Cal. 164, 19 Pac. 237, 11 Am. St. Rep. 257.

⁵⁵ *Dastervigues v. United States*, 122 Fed. 30, 58 C. C. A. 346, affirming 118 Fed. 119. *Contra*, *United States v. Blasingame*, 116 Fed. 654. In the first case it is said: "The secretary, by adopting this rule, acted simply as the arm that carries out the legislative will. He did not invade any of the functions of congress. He did not make any law, but he exercised the authority given to him, and made rules to preserve the forests on the reservations from destruction."

⁵⁶ *Harbor Com'rs v. Excelsior Redwood Co.*, 88 Cal. 491, 26 Pac. 875, 22 Am. St. Rep. 321.

⁵⁷ *State v. Burdge*, 95 Wis. 390,

§ 90 (69). Power to suspend and put in force a statute at pleasure.—A section of a statute relative to dogs made the owner of any dog liable to the owner of domestic animals wounded by it for the damages without proving a knowledge of its vicious disposition; by a provision of the act, power was given to the board of supervisors to determine whether or not during the current year their county should be governed by the provisions of the act of which that section constituted a part. It was held that the legislature could not confer that power.⁵⁸ The court pertinently remark that it could no more confer such a power than to authorize the board of supervisors of a county to abolish in such county the days of grace on commercial paper, or to suspend the statute of limitations. A similar statute in

70 N. W. 847, 60 Am. St. Rep. 123, 37 L. R. A. 157. The court says: "The provisions of the statute import and include an absolute delegation of the legislative power over the entire subject here involved, and this, too, without any previous legislative provision for compulsory vaccination, or as a condition of enrollment of children of proper school age as pupils in the public school, or of their right to attend such schools. Without any other legislative authority than the rights thus conferred, the state board of health assumed the power to so far control the public schools of the state as to require 'the proper school authorities, in their respective localities, to enforce the rule in question.' It cannot be doubted but that, under appropriate general provisions of law, in relation to the prevention and suppression of dangerous and contagious diseases, authority may be conferred by the legislature upon

the state board of health or local boards to make reasonable rules and regulations for carrying into effect such general provisions, which will be valid, and may be enforced accordingly. The making of such rules and regulations is an administrative function, and not a legislative power, but there must be some substantive provision of law to be administered and carried into effect. The true test and distinction whether a power is strictly legislative, or whether it is administrative, and merely relates to the execution of the statute law, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority and discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done. To the latter, no valid objection can be made."

⁵⁸ *Slinger v. Henneman*, 38 Wis. 504, 508-510. See *post*, § 101.

Missouri was held void for the same reason.⁵⁹ A general statute formulating a road system contained a provision that "if the county court of any county should be of opinion that the provisions of the act should not be enforced, they might, in their discretion, suspend the operation of the same for any specified length of time; and thereupon the act should become inoperative in such county for the period specified in such order, and thereupon order the road to be opened and kept in good repair under the laws theretofore in force." Gamble, J., said, "this act, by its own provisions, repeals the inconsistent provisions of a former act, and yet it is left to the county court to say which act shall be in force in their county. The act does not submit the question to the county court as an original question, to be decided by that tribunal, whether the act shall commence its operation within the county; but it became by its own terms a law in every county not excepted by name in the act. It did not then require the county court to do any act in order to give it effect. But being the law in the county, and having by its provisions superseded and abrogated the inconsistent provisions of the previous laws, the county court is . . . empowered to suspend this act, and revive the repealed provisions of the former act. When the question is before the county court, for that tribunal to determine which law shall be in force, it is urged before us that the power then to be exercised by the court is strictly legislative power, which, under our constitution, cannot be delegated to that tribunal or to any other body of men in the state. In the present case the question is not presented in the abstract; for the county court of Salem county, after the act had been for several months in force in that county, did, by order, suspend its operation; and during that suspension, the offense was committed which is the subject of the present indictment."

⁵⁹ *State v. Field*, 17 Mo. 529, 59 Am. Dec. 275. And see *Mitchell v. State*, 134 Ala. 892, 32 So. 687.

§ 91. Authority to prescribe form of insurance policy. Several states have passed laws requiring the insurance commissioner or commissioners to prepare a form of insurance policy, with such provisions, agreements and conditions as he might approve, and making the use of such form compulsory. These laws have, we believe, uniformly been held invalid as a delegation of legislative power.⁶⁰ In giving its decision upon such a law the Minnesota supreme court, in the case cited, says: "It will not do to say that the preparation of the form was an unimportant matter of detail, or an act partaking of an executive or administrative character. It was the sole purpose of the act. It was the only subject named in the title. . The enforcement of the standard form of policy was the only object of its penalties. Take out the form prepared by the insurance commissioner, and to be found in some pigeon hole in his office, and the act is without meaning or effect; it is completely eviscerated. We do not see how a case could be stated that would show a more complete and unconstitutional surrender of the legislative function than that presented by the act of 1891. By its provisions the legislature says in effect to its appointee, 'Prepare just such a policy or contract as you please. We do not care to know what it is. The governor shall have no opportunity to veto it. File it in your own office and we will compel its adoption, whether it is right or wrong, by the punishment of every company, officer or agent who hesitates to use it.' "

§ 92. Acts for the incorporation of municipalities or for annexing or excluding territory.— Acts for the incorporation of cities, villages or towns, and acts providing for annexing or excluding territory therefrom, frequently impose duties and powers upon courts or judges in relation

⁶⁰ *Anderson v. Manchester Fire Ass'n Co.*, 59 Minn. 182, 64 N. W. 241, 50 Am. St. Rep. 400, 28 L. R. A. 609; *O'Neill v. Am. Fire Ins. Co.*, 166 Pa. St. 72, 80 Atl. 945, 45 Am. St. Rep. 650, 26 L. R. A. 715; *Dowling v. Lancashire Ins. Co.*, 92 Wis. 63, 65 N. W. 788, 81 L. R. A. 112.

thereto. Such acts have been assailed as delegations of legislative power, and as conferring upon courts or judges functions not judicial.⁶¹ A statute of Kansas provided for the extension of the limits of a city by ordinance, but provided for a hearing upon the proposed ordinance before the district court. If the court found that the extension would be for the interest of the city and no manifest injury to the owners of the land involved, it was to approve the ordinance, and the court was given power to modify or disapprove the proposed ordinance. The council could only pass such an ordinance as was approved by the court, but the extension was only effected by the passage of the ordinance. It was held that the law was not void as a delegation of legislative power.⁶² Similar statutes have been upheld in other states.⁶³ The ultimate question of the policy or expediency of incorporating certain territory as a municipality, or of determining what territory shall be included in a particular incorporation, is a legislative question and cannot be delegated to a court or judge.⁶⁴ The contrary is held in Utah as to the disconnection of territory from a city.⁶⁵ An act for the incorporation of cities, which authorized the township committee to hear complaints as to territory to be included or excluded from the proposed incorporation, and to fix the boundaries of the proposed city, was held not a delegation of legislative power.⁶⁶

§ 93. Acts held to be a delegation of legislative power.—An act making it the duty of county commissioners to cause a road to be improved in the manner and

⁶¹ The latter phase of the subject is considered *ante*, § 4.

⁶² *Callen v. Junction City*, 43 Kan. 627, 23 Pac. 652, 7 L. R. A. 736; *Huling v. Topeka*, 44 Kan. 577, 24 Pac. 1110; *Hurla v. Kansas City*, 46 Kan. 738, 27 Pac. 143; *Emporia v. Randolph*, 56 Kan. 117, 42 Pac. 876; *Eskridge v. Emporia*, 63 Kan. 368, 65 Pac. 694.

⁶³ *Lewis v. Brandenburg*, 105 Ky.

14, 47 S. W. 862; *Copeland v. St. Joseph*, 126 Mo. 417, 29 S. W. 281.

And see *ante*, § 4.

⁶⁴ *In re Incorporation of North Milwaukee*, 93 Wis. 616, 67 N. W. 1033, 83 L. R. A. 638.

⁶⁵ *Young v. Salt Lake City*, 24 Utah. 321, 67 Pac. 1066.

⁶⁶ *State v. Stout*, 58 N. J. L. 598, 83 Atl. 858.

within the limits specified in a petition was held void as delegating legislative power to the petitioners.⁶⁷ The following were held void on the same ground: An act authorizing a public officer to fix a license fee for department stores between the limits of three hundred and five hundred dollars, in his discretion.⁶⁸ The legislature should fix the amount or prescribe rules for its determination. An act that if the labor commissioner finds that the injuries from inhaling dust, gas, etc., in any factory or workshop may be to a great extent prevented by the use of some device, he may require its use, and imposing a penalty for failure to comply.⁶⁹ An act that on petition of one hundred voters of any city the governor may, in his discretion, appoint a commission of three to divide the city into wards.⁷⁰ An act authorizing the circuit court, on the application of any city, to assign it to the class to which its population entitles it to belong.⁷¹ An act providing that if the local authorities should fail to levy taxes for certain specified purposes, the governor should appoint commissioners, who should levy such taxes in their discretion, not exceeding a given per centum.⁷²

When the constitution requires the salaries of certain officers and their deputies to be fixed by law, a statute authorizing a court or county board to do so is an unwarranted delegation of the power.⁷³ The power to create an office, or to consolidate two or more offices, or to fix the terms or duties pertaining to an office, has been held to be one which cannot be delegated, even to a municipality.⁷⁴

⁶⁷ *Wyandotte Co. Com'rs v. Abbott*, 52 Kan. 148, 84 Pac. 416; *Hovey v. Wyandotte Co. Com'rs*, 56 Kan. 577, 44 Pac. 17.

⁶⁸ *State v. Ashbrooke*, 154 Mo. 375, 55 S. W. 627, 77 Am. St. Rep. 776.

⁶⁹ *Schaezlein v. Cabaniss*, 135 Cal. 466, 67 Pac. 755.

⁷⁰ *Gilhooly v. Elizabeth*, 66 N. J. L. 484, 49 Atl. 1106.

⁷¹ *Jernigan v. Madisonville*, 102 Ky. 813, 43 S. W. 448, 39 L. R. A. 214.

⁷² *Bernards Tp. v. Allen*, 61 N. J. L. 228, 39 Atl. 716.

⁷³ *Dougherty v. Austin*, 94 Cal. 601, 28 Pac. 884, 29 Pac. 1092, 16 L. R. A. 161; *Commonwealth v. Addams*, 95 Ky. 588, 26 S. W. 581.

⁷⁴ *Farrell v. Board of Trustees*, 85

§ 94. Acts held not to be a delegation of legislative power.—The following acts were held not to be a delegation of legislative power: An act requiring fire-escapes on certain buildings and providing that the number, location, material and construction of such escapes should be subject to the approval of the inspector of factories.⁷⁵ An act prohibiting book-making and pool-selling without a license as provided in the act, and which authorized the state auditor to license the same on a race course or fair ground on contests to take place thereon, "if satisfied of the good character of such applicant, and the good repute of the race course or fair ground upon which the applicant may desire to conduct such business."⁷⁶ An act authorizing certain named persons to select the site for a public building.⁷⁷ An act providing for the transfer of inmates of a reformatory to the state prison, if the governor is of the opinion that their presence is detrimental to other inmates of the reformatory.⁷⁸ Other cases holding the acts in question not to be a delegation of legislative power are referred to in the margin.⁷⁹

Cal.408, 24 Pac.868; *State v. Orange*, 60 N. J. L. 111, 36 Atl. 706.

The following are additional examples of laws held invalid as a delegation of legislative power: *McCabe v. Carpenter*, 102 Cal. 469, 36 Pac. 836; *Noel v. People*, 187 Ill. 587, 58 N. E. 616, 79 Am. St. Rep. 238, 52 L. R. A. 287; *Owensboro & Nashville Ry. Co. v. Todd*, 91 Ky. 175, 15 S. W. 56, 11 L. R. A. 285; *State v. Nine Justices*, 90 Tenn. 722, 18 S. W. 393; *People v. Cummings*, 88 Mich. 249, 50 N. W. 310, 14 L. R. A. 285.

⁷⁵ *Arms v. Ayers*, 192 Ill. 601, 61 N. E. 851, 85 Am. St. Rep. 357.

⁷⁶ *State v. Thompson*, 160 Mo. 338, 60 S. W. 1077, 88 Am. St. Rep. 468. The court says: "The power dele-

gated to the state auditor is not the power to make a law, but is a power to determine a fact or thing upon which the action of the law depends, and it cannot be said to be legislative in its character." p. 344.

⁷⁷ *People v. Dunn*, 80 Cal. 211, 22 Pac. 140, 13 Am. St. Rep. 118. And see *State v. McGraw*, 13 Wash. 311, 43 Pac. 176.

⁷⁸ *In re Linden*, 112 Wis. 523, 88 N. W. 645.

⁷⁹ *McGraw v. County Com'rs*, 89 Ala. 407, 8 So. 852; *Kumler v. Supervisors*, 103 Cal. 393, 37 Pac. 888; *People v. Lodi High School Dist.*, 124 Cal. 694, 57 Pac. 660; *Board of Co. Com'rs v. Smith*, 22 Colo. 534, 45 Pac. 857; *Reynolds v. Oneida Co. Com'rs*,

An act of congress forbade the importation of tea which was inferior in purity, quality, and fitness for consumption to certain standards to be fixed and established by the secretary of the treasury, on the recommendation of a board of tea experts appointed by him. The act was assailed as invalid, because it vested the secretary of the treasury with power to fix the standards and thereby determine what teas might be imported and what not. But the court sustained the act on the ground that its object was to prevent the importation of teas which were unfit for consumption, that congress had, by the act, legislated on the subject as far as was reasonably practicable, and had only left to executive officials the duty of determining what teas were so unfit, and so of bringing about the result sought by the statute.⁸⁰

§ 95 (70). Exceptions which have been established.— There are some valid delegations of legislative power. Congress may delegate it to territorial governments.⁸¹ And all the authorities agree that the power to make local by-laws and regulations may be delegated to municipal corporations.⁸² And, to a certain extent at least, such delegation may be made to *quasi* public corporations, such as county boards.⁸³

6 Idaho, 787, 59 Pac. 730; *People v. Simon*, 176 Ill. 165, 52 N. E. 910, 68 Am. St. Rep. 175; *Ford v. North Des Moines*, 80 Iowa, 626, 45 N. W. 1031; *State v. Adams Express Co.*, 66 Minn. 271, 68 N. W. 1085; *Northern R. R. Co. v. Manchester, etc. R. R. Co.*, 66 N. H. 560, 31 Atl. 17; *State v. Barringer*, 110 N. C. 525, 14 S. E. 781; *Jermeyer v. Scranton*, 186 Pa. St. 595, 40 Atl. 972; *Nelson v. Troy*, 11 Wash. 435, 39 Pac. 974; *State v. Heineman*, 80 Wis. 253, 49 N. W. 818, 27 Am. St. Rep. 34; *E. A. Chatfield Co. v. New Haven*, 110 Fed. 788; *Leeper v. State*, 103 Tenn. 500, 53 S. W. 962, 48 L. R. A. 167; *Johnson v. Martin*, 75 Tex. 33, 12 S. W. 321; *Hand v. Stapleton*, 135

Ala. 156, 33 So. 689; *People v. The Warden*, 39 Misc. 113, 78 N. Y. S. 967; *In re Linden*, 112 Wis. 523, 88 N. W. 645; *Matter of La Société Francaise, etc.*, 123 Cal. 525, 56 Pac. 458; *Kennedy v. Pawtucket*, 24 R. I. 401.

⁸⁰ *Buttfield v. Stranahan*, 192 U. S. 470; *Buttfield v. Bidwell*, 96 Fed. 328, 37 C. C. A. 506.

⁸¹ See *ante*, §§ 24-26.

⁸² *State v. King*, 37 Iowa, 462; *Brown v. Holland*, 97 Ky. 249, 30 S. W. 629; *State v. Gloucester County*, 50 N. J. L. 585, 15 Atl. 272; *State v. Nohl*, 113 Wis. 15, 88 N. W. 1004.

⁸³ *Ryan v. Outagamie County*, 80 Wis. 836, 50 N. W. 840; *Wentworth*

Congress has power to annul territorial legislation; so state legislatures may annul municipal laws; but the annulling act has only the effect of a repeal. They are valid until annulled; they are not thus made void from the beginning. The delegation of legislative power to cities is a limited one — to make by-laws or ordinances; but still a delegation of legislative power.⁸⁴ The delegation of power in these instances is to formulate and put in force rules of civil conduct of more or less scope. The territorial grant extends to "all rightful subjects of legislation;" it is granted as broadly as by constitutions to the state legislatures. The power to legislate for the territories was granted to congress by the federal constitution.⁸⁵ The delegation of it to the territorial government is a departure from the general rule, but consistent with the principles which support the rule; for it is a concession of the right of self-government to those who would otherwise have no voice in making the laws which govern them. The delegation of this power to municipalities is justified on the ground of presumed intention of the people, from the immemorial practice in this country and in England of creating their local governments.⁸⁶ These

v. Racine County, 99 Wis. 26, 74 N. W. 574.

⁸⁴ *Kelly v. Meeks*, 87 Mo. 896, 18 Am. & Eng. Corp. Cas. 220.

⁸⁵ *Dred Scott v. Sandford*, 19 How. 393, 15 L. Ed. 691; *National Bank v. County of Yankton*, 101 U. S. 129, 25 L. Ed. 1046.

⁸⁶ *Trigally v. Mayor, etc.*, 6 Cold. 382; *Clarke v. Rochester*, 28 N. Y. 605; *State v. Gloucester County*, 50 N. J. L. 585, 15 Atl. 272; *Cooley's Con. Lim.* 143. This subject is thus discussed by Battle, J., in *Thompson v. Floyd*, 2 Jones' L. 313: "Neither is it necessary for us to consider the general question whether the general assembly can delegate any portion of its legisla-

tive functions to any man or set of men acting either in an individual or corporate capacity. That it may have been too long settled and acquiesced in by every department of the government and by the people to be now disputed or even discussed. The taxing power is unquestionably a legislative power, and one of the highest importance. and yet it has, ever since the adoption of the constitution, been partially delegated to the justices of the county courts and to every incorporated city, town and village throughout the state. The power to pass laws and ordinances for the government of the members of a corporation is a legislative power,

departures decentralize the governing power; the governed have thus a direct voice in the regulation of their local affairs. But what the legislature is expressly forbidden to do it cannot delegate the power to do.⁸⁷ A constitutional provision expressly authorizing the legislature to delegate the power of taxation to counties and incorporated towns was held to impliedly exclude all other delegation of the power; and an act creating a levee district with power to tax was held void.⁸⁸

§ 96 (71). **Effect of submitting laws or questions controlling their effect to popular vote of the state at large.** The legislature having the general power of enacting laws may enact them in its own form when not restricted, and give them such effect, to be worked out in such a way and by such means as it chooses to prescribe. It may provide that a law shall go into effect at one time or another; abso-

and yet no person has yet thought it an infringement of the constitution for the legislature to confer the power of making by-laws upon the corporation itself. The power of prescribing rules for the orderly conduct of business in a court of justice is a legislative power, and yet it has often been intrusted to the courts themselves with the approbation of everybody. The truth is, that in the management of all the various and minute details which a highly civilized and refined society requires, the general assembly must have, and are universally conceded to have, the power to act by means of agents, which agents may be either individuals or political bodies, most generally the latter. Without such power the legislature would be an unwieldy body, incapable of accomplishing one-half of the great purposes for which it was created.

"The act [in question] authorized the county court to ascertain a fact, i. e. whether a majority of them were in favor of surrendering the jurisdiction of having jury trials in that court, and in the event of the fact being thus found, enacted that thereafter such jurisdiction should be taken from them and vested exclusively in the superior court of the county. When the fact was ascertained and the consequence ensued, the county courts were *functi officio* — had no further power over the matter; they had not in any proper sense legislative power."

⁸⁷ *Yarnell v. Los Angeles*, 87 Cal. 603, 25 Pac. 767; *Tacoma v. Krech*, 15 Wash. 296, 46 Pac. 255.

⁸⁸ *Reelfoot Lake Levee Dist. v. Dawson*, 97 Tenn. 151, 36 S. W. 1041, 34 L. R. A. 725.

lutely or on condition; upon certain terms or on a certain event, or without regard to future events.⁸⁹

§ 97 (72). It is agreed by all the authorities that an act may be valid though its taking effect is made to depend on a future contingent event. The case of the *Cargo of Brig Aurora v. United States*⁹⁰ presents an instance of such an act.

The result of a popular vote is an uncertain event; but there is some diversity of decision on the question whether the taking effect of a general act can be made to depend on such a contingency. Very few cases, however, have come before the courts involving that question. *Barto v. Himrod*⁹¹ is an early one of that limited number, decided in 1853. An act "establishing free schools throughout the state" was

⁸⁹ *Hobart v. Supervisors*, 17 Cal. 23. In *Blanding v. Burr*, 13 Cal. 357, Field, J., said of a local law providing for its submission to popular vote: "The act in question authorizes the issuance of the bonds upon the condition that objection to their issuance was not interposed in a specified manner. As an emanation of the legislative will it was perfect in all its parts. The condition upon the exercise of authority was imposed by the legislature itself, and involved no delegation of legislative authority. Laws may be absolute, dependent upon no contingency, or they may be subject to such conditions as the legislature, in its wisdom, may impose. They may take effect only upon the happening of events which are future and uncertain; and, among others, the voluntary act of the parties upon whom they are designed to operate. They are not less perfect and complete when passed by the legislature, though

future and contingent events may determine whether or not they shall ever take effect. In anticipation of invasion or insurrection or local disturbance, or other emergencies requiring the exercise of special powers, acts were constantly passed, and yet no one has ever questioned their validity as laws because dependent in their operation upon occasions which may never arise. So the legislature may confer a power without desiring to enforce its exercise, and leave the question whether it shall be assumed to be determined by the electors of a particular district. The legislature may determine absolutely what shall be done, or it may authorize the same thing to be done upon the consent of third parties. It may command, or it may only permit; and in the latter case, as in the former, its acts have the efficacy of laws."

⁹⁰ 7 Cranch, 382, 3 L. Ed. 378.

⁹¹ 8 N. Y. 483, 59 Am. Dec. 506.

by its terms to be submitted to the qualified voters of the state to determine "whether this act shall or shall not become a law." The act — not merely the provisions for submission — was held void, because there was a delegation of legislative power to the people; they were to decide whether it should become a law or not. The act was framed and duly passed by the legislature and approved. It provided for a system of free schools. It enacted that it should be voted upon; what should be the effect of a majority in the negative, and the effect of a majority in the affirmative. In one event the system was to be practically adopted — put in operation; in the other, it was to be abandoned; these effects were alternatives in the act; it was so written. If valid, the system would go into effect or not, because the legislature had so provided. In either case the act would operate as a law. The expressions, therefore, in one event, that the act should "become a law," and in the other that it should "not become a law," were precisely equivalent in substance to "take effect" or "not take effect." And Ruggles, C. J., said: "If, by the terms of the act, it had been declared to be law from the time of its passage, to take effect in case it should receive a majority of votes in its favor, it would nevertheless have been invalid, because the result of the popular vote upon the expediency of the law is not such a future event as the statute can be made to take effect upon, according to the meaning and intent of the constitution."⁹²

⁹² The chief justice amplified in this language: "The event or change of circumstances on which a law may be made to take effect must be such as, in the judgment of the legislature, affects the question of the expediency of the law; an event on which the expediency of the law in the judgment of the lawmakers depends. On this question of expediency the legislature

must exercise its own judgment definitively and finally. When a law is made to take effect upon the happening of such an event, the legislature in effect declare the law inexpedient if the event should not happen; but expedient if it should happen. They appeal to no other man or men to judge for them in relation to its present or future expediency. They exercise

A case arose in Iowa involving a similar question, and it was decided in the same way.⁹³ It recognized the validity of laws made to take effect upon the happening of a contingent event. On the question whether the result of a popular vote on the act going into effect was an event on which its going into effect could be made to depend, the court used this language: "If the people are to say whether an act shall become a law, they become, or are put in the place of, the law makers. And here is the constitutional objection. Their will is not a contingency upon which certain things are, or are not, to be done under the law, but it becomes the determining power whether such shall be the law or not. This makes them the 'legislative authority,' which, by the constitution, is vested in the senate and house of representatives, and not in the people." The legislature cannot refer a bill to the people for them to make it a law by popular vote. When such vote is called for to give the force of law to a proposal or plan of a law formu-

that power themselves, and thus perform the duty which the constitution imposes upon them.

"But in the present case no such event or change of circumstances affecting the expediency of the law was expected to happen. The wisdom or expediency of the free-school act, abstractly considered, did not depend on the vote of the people. If it was unwise or inexpedient before that vote was taken, it was equally so afterwards. The event on which the act was made to take effect was nothing else than the vote of the people on the identical question which the constitution makes it the duty of the legislature itself to decide. The legislature has no power to make a statute dependent on such a contingency, because it would be con-

fiding to others that legislative discretion which they are bound to exercise themselves, and which they cannot delegate or commit to any other man or men to be exercised. They have no more authority to refer such a question to the whole people than to an individual. The people are sovereign, but their sovereignty must be exercised in the mode which they have pointed out in the constitution. All legislative power is derived from the people; but when the people adopted the constitution they surrendered the power of making laws to the legislature, and imposed it upon that body as a duty."

⁹³ *Santo v. State*, 2 Iowa, 165, 63 Am. Dec. 487. See *Geebrick v. State*, 5 Iowa, 491; *Weir v. Cram*, 37 id. 649; *State v. Weir*, 83 id. 184.

lated by the legislature and submitted to the people, the courts only declare a truism, on which there is no dissent, in holding acts so adopted unconstitutional. But if an act is adopted by the legislature as a law, and, pursuant to its provisions, it is submitted to the people, and on their expression of approval or disapproval, as a fact or event, the act by its terms does or does not take effect, or takes effect at one particular date rather than another, then apparently the only question is whether the legislature can pass a law to take effect on such a contingency. The authorities would seem now to have established the doctrine, though not universally, that the result of a popular vote is a contingency on which laws may be enacted to take effect.⁹⁴

In a late case in Mississippi,⁹⁵ Campbell, J., delivering the opinion of the court, said: "On the question of the right to make an act of the legislature to depend for its operation on a future contingency, argument was exhausted long ago, and the principle established by oft-repeated examples, and by adjudications in this state and elsewhere in great numbers, that this may be done without violating the constitution. It is idle to talk of precedent and subsequent contingencies or conditions, between defeating the operation of an act or putting it in operation. There is no such distinction. It is merely fanciful and deceptive. It is for the legislature in its discretion to prescribe the future contingency, and it is not an objection on constitutional grounds that a popular vote is made the contingency."

§ 98. The legislature of Massachusetts submitted to the supreme court, for its opinion, the following questions:

"1. Is it constitutional, in an act granting to women the

⁹⁴ See cases cited *ante*, §§ 96, 97; Reynolds, 5 Gilm. 1; Alcorn v. People v. Hoffman, 116 Ill. 587, 5 N. E. 596, 56 Am. Rep. 793, 11 Am. & Eng. Corp. Cas. 40; Potwin v. Johnson, 108 Ill. 70; Fell v. State, 42 Md. 71; Mayor, etc. v. Clunet, 23 id. 469; Bull v. Read, 18 Gratt. 88; Burgess v. Pue, 2 Gill, 11; People v. Salomon, 51 Ill. 87; People v. Reynolds, 5 Gilm. 1; Hamer, 38 Miss. 652; Guild v. Chicago, 82 Ill. 472; Locke's Appeal, 72 Pa. St. 491; People v. Butte, 4 Mont. 174; State v. Wilcox, 42 Conn. 864; State v. Cooke, 24 Minn. 247, 31 Am. Rep. 844.

⁹⁵ Schulherr v. Bordeaux, 64 Miss. 59, 8 So. 201.

right to vote in town and city elections, to provide that such act shall take effect throughout the commonwealth upon its acceptance by a majority vote of the voters of the whole commonwealth?

“2. Is it constitutional to provide in such an act that it shall take effect in a city or town upon its acceptance by a majority vote of the voters of such city or town?

“3. Is it constitutional, in an act granting to women the right to vote in town and city elections, to provide that such an act shall take effect throughout the commonwealth upon its acceptance by a majority vote of the voters of the whole commonwealth, including women specially authorized to register and to vote on this question alone?”

Field, chief justice, and Allen, Morton and Lathrop, justices, concurred in answering all the questions in the negative. Justices Holmes and Barker answered all in the affirmative, while Justice Knowlton answered the first and third in the negative and the second in the affirmative.⁹⁶ The majority say in their opinion: “It is true that a general law can be passed by the legislature, to take effect upon the happening of a subsequent event. Whether this subsequent event can be the adoption of the law by a vote of the people has occasioned some differences of opinion, but the weight of authority is that a general law cannot be made to take effect in this manner. Whether such legislation is submitted to the people as a proposal for a law, to be voted upon by them, and to become a law if they approve it, or as a law to take effect if they vote to approve it, the substance of the transaction is that the legislative department declines to take the responsibility of passing the law; but the law has force, if at all, in consequence of the votes of the people; they ultimately are the legislators. It seems to us that by the constitution the senate and the house of representatives have been made the legislative department

⁹⁶ Opinion of the Justices, 160 Mass. 586, 36 N. E. 488, 23 L. R. A. 113.

of the government, and that there has not been reserved to the people any direct part in legislation.”⁹⁷

§ 99 (73). **Same — Cases maintaining constitutionality of such acts.**— Two cases arose in 1854 involving the question whether a provision of an act was valid which referred to the people a choice of the time when an act should take effect. One was *State v. Parker*.⁹⁸ By the terms of the act it was to take effect on the second Tuesday of March, 1853, with a proviso “that if a majority of the ballots to be cast as hereinafter provided shall be ‘no,’ then this act shall take effect on the first Monday of December, A. D. 1853.” The act was held valid. The case must have been determined in the same way had the proviso for submission to the people been held void, and the act otherwise valid; but the proviso was sustained upon thorough consideration Redfield, C. J., delivering the opinion of the court, used this language: “It seems to me that the distinction attempted between the contingency of a popular vote and other future uncertainties is without all just foundation in sound policy or sound reasoning, and that it has too often been made more from necessity than choice — rather to escape from an overwhelming analogy than from any obvious difference in principle in the two classes of cases; for . . . one may find any number of cases in the legislation of congress where statutes have been made dependent upon the shifting character of the revenue laws, or the navigation laws, or commercial rules, edicts or restrictions of other countries.”

The other case is *People v. Collins*.⁹⁹ The act in question was passed in February, 1853. It provided in substance that if a majority of the votes were “yes,” the act should “become a law of the state from and after the 1st day of December, 1853, and if a majority were ‘no,’ then the act should take effect and become a law from and after the 1st

⁹⁷ To same effect, *State v. Hayes*,
64 N. H. 264.

⁹⁸ 26 Vt. 357.
⁹⁹ 3 Mich. 343.

day of March, 1870." The court was equally divided on the question of the validity of the act.¹

In *Smith v. Janesville*,² the supreme court of Wisconsin held a general act valid which by its provisions was to take effect only after approval by a majority of the electors voting on the subject at a general election. The court, by Dixon, C. J., thus maintains the validity of acts referred to the people for approval or disapproval: "This," he says, "is no more than providing that the act should take effect on the happening of a certain future contingency, that contingency being a popular vote in its favor. No one doubts the general power of the legislature to make such regulations and conditions as it pleases with regard to the taking effect or operation of laws. They may be absolute or conditional, and contingent; and if the latter, they may take effect on the happening of any event which is future and uncertain. Instances of this kind of legislation are not unfrequent. The law of congress suspending the writ of *habeas corpus* during the late rebellion is one.³ It being conceded that the legislature possesses this general power, the only question here would seem to be whether a vote of the people in favor of a law is to be excluded from the number of these future contingent events upon which it may be provided that it shall take effect. A similar question was before this court in a late case⁴ and was very elaborately discussed. We came unanimously to the conclusion in that case, that a provision for a vote of the electors of the city of Milwaukee in favor of an act of the legislature, before it should take effect, was a lawful contingency, and that the act was valid. That was a law affecting the people of Milwaukee particularly, while this was one affecting the people of the whole state. There the law was submitted to the voters of that city, and here it was submitted to those of the state at large. What is the difference be-

¹ See *People v. Burns*, 5 Mich. 114.

² 26 Wis. 291.

³ In re *Oliver*, 17 Wis. 681.

⁴ *State v. O'Neill*, 24 Wis. 149.

tween the two cases? It is manifest, on principle, that there cannot be any.”⁵

§ 100 (74). **The operation and terms of an act may be made to depend on foreign legislation.**—A statute of Illinois provides a general rate of taxation and scale of fees to be paid by foreign insurance companies doing business in that state. It also provides, by way of exception, that where the laws of the state to which such foreign company belonged had imposed, or should thereafter impose, upon Illinois insurance companies doing business therein a higher rate of taxation than is required by the laws of Illinois, then the insurance companies of that state doing business in Illinois should there pay the higher rate charged in the state to which they belonged upon Illinois companies doing business in such state. The validity of this statute came in question in a late case in that state.⁶ It was objected to on the ground that thereby the legislature had abdicated its legislative functions and surrendered them to a foreign state. The court denied the force of this objection, and by Mulkey, J., thus answered it: “It is competent for the legislature to pass a law the ultimate operation of which may by its own terms be made to depend upon some contingency, as upon the affirmative vote by the electors of a given district, or upon any other indifferent contingency the legislature in its wisdom may prescribe. Where the contingency upon which the ultimate operation of a law is

⁵ The constitution of South Dakota, section 1, article 8, reserves to the people the right to initiate legislation by a petition of five per cent. of the qualified electors of the state, whereupon it is made the duty of the legislature to pass the law petitioned for and submit it to a popular vote of the state. There is also reserved to the people the right, by like petition, “to require that any laws which the legisla-

ture may have enacted shall be submitted to a vote of the electors of the state before going into effect, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions.” See *State v. Bacon*, 14 S. D. 394, 85 N. W. 605.

⁶ *Home Ins. Co. v. Swigert*, 104 Ill. 653.

made to depend consists of a vote of the people, or the action of some foreign deliberative or legislative body, as is the case here, it is erroneous to suppose the legislature in such case abandons its own legislative functions, or delegates its powers to the people in the one case or to such foreign deliberative or legislative body in the other. In either case the law is complete when it comes from the hands of the legislature, otherwise it would be inoperative and void; for we fully recognize the principle that a law, properly so called, cannot have a mere fragmentary or inchoate existence; and even if it could, neither the people by a vote, nor any other independent body, could complete the unfinished work of the legislature, and thus make it a law. But while this is so, nothing is better settled than that the operation and even remedial character of a perfect and complete law may, by virtue of limitations contained in the law itself, based upon contingent extraneous matters, be enlarged, diminished, or wholly defeated. Such laws, though adopted, and absolutely perfect in all their parts, yet by their own limitations they are applicable to a hypothetical condition of things only, and which may or may not ever happen." Similar laws have been upheld in other states.⁷

§ 101. Effect of giving president power to suspend operation of act.—A national revenue act gave the president power, whenever satisfied that any country producing and exporting sugars, molasses, coffee, tea and hides, imposes duties upon the agricultural or other products of the United States, which he may deem to be unequal and unreasonable, to suspend by proclamation the provisions of the act in reference to the free introduction of the above articles, for such time as he shall deem just, and the act prescribed certain duties which should be levied upon any of these articles imported during such suspension. The act was held not to be a delegation of legislative power. The court says: "As the

⁷ Talbott v. Fidelity & Casualty Ins. Co. v. Welch, 29 Kan. 672; Co., 74 Md. 536, 22 Atl. 395; Phoe- People v. Fire Ass'n, 92 N. Y. 311.

suspension was absolutely required when the president ascertained the existence of a particular fact, it cannot be said that in ascertaining that fact and in issuing his proclamation, in obedience to the legislative will, he exercised the function of making laws. Legislative power was exercised when congress declared that the suspension should take effect upon a named contingency. What the president was required to do was simply in execution of the act of congress. It was not the making of law. He was the mere agent of the law-making department to ascertain and declare the event upon which its expressed will was to take effect. It was a part of the law itself as it left the hands of congress that the provisions, full and complete in themselves, permitting the free introduction of sugars, molasses, coffee, tea and hides, from particular countries, should be suspended, in a given contingency, and that in case of such suspensions certain duties should be imposed.”⁸

§ 102 (75). **Local laws dependent on popular vote generally held valid.**—It is now settled that laws, at least of local application, may be imperative or permissive; they may authorize the people of cities, villages, townships, counties, groups of counties, or other limited districts, not otherwise defined than for the purposes of such acts, to determine for themselves local questions of police, taxation, or any other matter affecting their local welfare; and the law may be conditioned to carry into effect their determination or option.⁹ They have thus been authorized to decide by popular vote and execute their decision to contribute for the building of railroads or other like public improvements;¹⁰

⁸ *Field v. Clark*, 143 U. S. 649, 693, 12 S. C. 495, 36 L. Ed. 294.

⁹ *Blanding v. Burr*, 18 Cal. 343; *People v. Salomon*, 51 Ill. 37.

¹⁰ *Starin v. Town of Genoa*, 23 N. Y. 439; *Clarke v. Rochester*, 28 N. Y. 605; *Grant v. Courter*, 24 Barb. 242; *Corning v. Greene*, 23 id. 33; *Cincinnati, etc. R. R. Co. v.*

Commissioners, 1 Ohio St. 77; *Hobart v. Supervisors*, 17 Cal. 23;

Moers v. Reading, 21 Pa. St. 189; *Bank of Rome v. Village of Rome*,

18 N. Y. 38; *Cotton v. Leon County*, 6 Fla. 610; *Powers v. Inferior Ct.*, 23 Ga. 65; *State v. O'Neill, Mayor*, etc., 24 Wis. 149; *Alcorn v. Hamer*, 38 Miss. 652; *Slack v. Maysville*,

to divide a county or organize a new one;¹¹ to establish or remove a county seat;¹² whether there shall be license or prohibition of the liquor traffic;¹³ whether paupers shall be a county or a township charge;¹⁴ whether two municipalities shall be united into one;¹⁵ whether they will have a system of free schools;¹⁶ whether a school district shall be established or dissolved;¹⁷ whether a public library shall be

etc. *R. R. Co.*, 13 B. Mon. 1; *State v. Hudson County*, 52 N. J. L. 398, 20 Atl. 255; *Black v. Com'rs*, 129 N. C. 121, 39 S. E. 818; *Rose v. Beaver County*, 204 Pa. St. 373, 54 Atl. 263.

¹¹ *People v. McFadden*, 81 Cal. 489, 22 Pac. 851, 15 Am. St. Rep. 66; *Jackson v. State*, 131 Ala. 21, 31 So. 380; *People v. Reynolds*, 5 Gilm. 1; *People v. Burns*, 5 Mich. 114.

¹² *Barnes v. Supervisors*, 51 Miss. 305; *Ex parte Hill*, 40 Ala. 121; *Commonwealth v. Painter*, 10 Pa. St. 214; *Hamilton v. Carroll*, 82 Md. 326, 33 Atl. 648.

¹³ *Caldwell v. Barrett*, 73 Ga. 604; *Hammon v. Haines*, 25 Md. 541, 90 Am. Dec. 77; *Commonwealth v. Weller*, 14 Bush, 218, 29 Am. Rep. 407; *State v. Cooke*, 24 Minn. 247, 81 Am. Rep. 344; *Fell v. State*, 42 Md. 71, 20 Am. Rep. 83; *Locke's Appeal*, 72 Pa. St. 491, 13 Am. Rep. 716; *Boone v. State*, 12 Tex. App. 184; *Groesch v. State*, 42 Ind. 547; *Shulherr v. Bordeaux*, 64 Miss. 59, 8 So. 201; *Commonwealth v. Bennett*, 108 Mass. 27; *Territory v. O'Connor*, 5 N. D. 397, 41 N. W. 746; *State v. Wilcox*, 42 Conn. 364; *State v. Court Com. Pleas*, 36 N. J. L. 72, 13 Am. Rep. 422; *Barnes v. Supervisors*, 51 Miss. 307; *Alcorn v. Hamer*, 38 id. 745; *State v. Forkner*, 94 Iowa, 1, 62 N. W. 688; *State v. Pond*, 93 Mo. 606, 6 S. W. 469; *Ex*

parte Swan, 96 Mo. 44, 9 S. W. 10; *State v. Moore*, 107 Mo. 78, 16 S. W. 937; *State v. Wingfield*, 115 Mo. 428, 22 S. W. 363; *Warrensburg v. McHugh*, 122 Mo. 649, 27 S. W. 523; *Ex parte Bone Handler*, 176 Mo. 383, 75 S. W. 920. In *State v. Pond*, 96 Mo. 606, the court says: "It was the law that authorized the vote to be taken, and when taken the law, and not the vote, declared the result that should follow the vote. The vote was the means provided to ascertain the will of the people, not as to the passage of the law, but whether intoxicating liquors should be sold in their midst. If the majority voted against the sale, the law, and not the vote, declared it should not be sold. The vote sprang from the law, and not the law from the vote. By their vote the electors declared no consequences, prescribed no penalties and exercised no legislative function. The law declared the consequences, and whatever they may be they are exclusively the result of the legislative will." p. 622.

¹⁴ *Town of Fox v. Town of Kendall*, 97 Ill. 72.

¹⁵ *Stone v. Charlestown*, 114 Mass. 214.

¹⁶ *Bull v. Read*, 13 Gratt. 78.

¹⁷ *State v. Cooley*, 65 Minn. 406, 68 N. W. 66.

established and maintained;¹⁸ whether domestic animals shall be permitted to run at large.¹⁹ The people locally interested may have the option to accept or reject a municipal charter or amendatory acts,²⁰ or local police law.²¹

Acts giving such local options have not unfrequently been framed to secure it by making a new law go into effect or not according to the result of a popular vote.

In *State v. Noyes*,²² the people in a town meeting adopted a general law to suppress bowling alleys, and thereby, pursuant to its provisions, put it locally in operation.

In Mississippi an act for local taxation was, by its terms, suspended, and ceased to have effect by a protest of a majority of the legal voters.²³

By the terms of a local act of Wisconsin it was to be void unless the legal voters of the city to which it was applicable should vote to accept it. It was an act to establish a board of public works. It was held valid; that it was a constitutional act, to take effect or go into operation only upon a contingency provided in the law itself.²⁴

In a Virginia act for local free schools it was provided that the act should not be carried into effect until a majority of the people of the district should approve it. It was sustained as constitutional.²⁵

Such cases as *Rice v. Foster*,²⁶ *Parker v. Commonwealth*,²⁷ *Ex parte Wall*,²⁸ and *Maize v. State*,²⁹ are now exceptional,

¹⁸ *Board of Trustees v. Board of Supervisors*, 99 Cal. 571, 84 Pac. 244.

¹⁹ *Holcomb v. Davis*, 56 Ill. 413; *Erlinger v. Boneau*, 51 id. 94; *Dalby v. Wolf*, 14 Iowa, 228.

²⁰ *Mayor, etc. v. Finney*, 54 Ga. 317; *Wales v. Belcher*, 3 Pick. 508; *City of Paterson v. Society*, 24 N. J. L. 385; *People v. Butte*, 4 Mont. T. 179, 47 Am. Rep. 346.

²¹ *Boyd v. Bryant*, 35 Ark. 69, 37 Am. Rep. 6.

²² 30 N. H. 279.

²³ *Williams v. Cammack*, 27 Miss. 209, 61 Am. Dec. 508.

²⁴ *State v. O'Neill, Mayor, etc.*, 24 Wis. 149.

²⁵ *Bull v. Read*, 18 Gratt. 78.

²⁶ 4 Harr. 479.

²⁷ 6 Pa. St. 507, now overruled in *Locke's Appeal*, 72 id. 491.

²⁸ 48 Cal. 279.

²⁹ 4 Ind. 342, substantially overruled by *Groesch v. State*, 42 Ind. 547.

and are simply out of harmony with the law as generally held throughout the country.

On the whole it may perhaps be considered a sound conclusion, and I think it is supported by a preponderance of authority, that whether an act is general or local the legislature may in their wisdom take into consideration the wishes of the public, and determine not to impose a law on an unwilling or non-consenting people. Having the power to make their laws conditional to take effect only on the happening of contingent events, what the event shall be on which the taking effect of an act shall depend is not a judicial question, but wholly and absolutely within the discretion of the legislature, like the emergency which will induce them to make an act take immediate effect, and that the result of a popular vote is a contingent event within that discretion.

§ 103. Operation of law dependent on adoption by the corporate authorities.—A law to establish municipal courts in cities having a population of less than five thousand was to take effect only on its adoption by a four-fifths vote of the common council. This was held not a delegation of legislative power.³⁰ The court says: "The legislature has itself declared what the law shall be when it takes effect, and also upon what contingency it shall take effect, and when that contingency happens it takes effect by force of the legislative will. This does not amount to a delegation of legislative power." So it was held valid to provide in a general road law that it should not go into effect in any county until recommended by the grand jury of the county.³¹ An act extending the limits of a town may be made dependent upon acceptance by the mayor and commissioners of the town.³²

§ 104. Operation of general law dependent on local adoption.—It is common for the legislature to pass general

³⁰ *State v. Sullivan*, 67 Minn. 879, 884, 69 N. W. 1094.

³² *Manley v. Raleigh*, 4 Jones Eq. 870.

³¹ *Haney v. Bartow Co. Com'rs*, 91 Ga. 770, 18 S. E. 28.

laws, applicable to the whole state, with a provision that they shall operate only in such localities as shall adopt them by popular vote or otherwise. Such provisions for the operation of the act are valid and do not constitute a delegation of legislative power.³³ The court of errors and appeals of New Jersey, in passing on such a law, says: "Whenever a legislative act, no matter how specific or how general it be, puts it within the power of any political district to exercise a function of local government, such legislation is a complete and perfect declaration of the legislative will, and is not obnoxious to the charge that it delegates the law-making power."³⁴

But in Massachusetts it is held that a law giving women the right to vote at town and city elections may not be passed to operate only in such towns and cities as may adopt it by popular vote.³⁵ The court says: "It is certainly a difficult question to determine how far the principle of local option can be carried, and to what subjects it can be applied. An act granting to women the right to vote in town and city elections does not relate to the powers of towns and cities, which in some respects may well be different in different towns and cities on account of the number, wealth and pursuits of the inhabitants. Such an act relates solely to the persons who should be invested with a share of political power. Whether women should be permitted to vote in town and city elections seems to us is matter of general and not of local concern. There is nothing in the history of Massachusetts which tends to show that the right to vote in towns and cities in town and city affairs has ever been

³³ *Boyd v. Bryant*, 35 Ark. 69, 37 87 Ill. 524; *Shreve v. Cicero*, 129 Am. Rep. 6; *In re Petition of Cleveland*, 52 N. J. L. 188, 19 Atl. 17, 7 L. R. A. 431; *De Hart v. Atlantic City*, 62 N. J. L. 586, 41 Atl. 687; S. C. reversed on another point, 63 N. J. L. 223, 43 Atl. 742; *Adams v. Beloit*, 105 Wis. 363, 81 N. W. 869, 47 L. R. A. 441; *Martin v. People*, 87 Ill. 524; *Shreve v. Cicero*, 129 Ill. 226, 21 N. E. 815.

³⁴ *In re Petition of Cleveland*, 52 N. J. L. 188, 190, 19 Atl. 17, 7 L. R. A. 431.

³⁵ *Opinion of the Justices*, 160 Mass. 586, 36 N. E. 488, 23 L. R. A. 113.

regarded as a matter of police regulation or of merely local interest; or as a right which might be granted or withheld by a licensing board. It always has been determined by the legislature by a general law, in force uniformly throughout the commonwealth."

§ 105. Adoption must be co-extensive with territory affected by the law.—The principle upon which it is held competent for the legislature to leave it to the people of a locality to determine whether they will be governed by a particular law or not, precludes the right to leave it to one locality to determine whether a given law shall operate in another locality. Thus a statute of Maryland forbade the taking of oysters by scoop or dredge within the waters of Somerset county, but was not to go into effect unless adopted by popular vote in certain election precincts in that county. The court held that the law affected all the people of the state, and that it was invalid for the reason that "it would be against every principle of sound legislative policy, and repugnant to the maxim which forbids the delegation of legislative power, to hold that it is competent for the legislature to make the operation of a statute thus affecting the common right of the people of the whole state, depend upon the result of a popular vote of persons residing within three or four or any given number of election districts of a county. We have no disposition to extend the exceptions to the general maxim, which wisely forbids the delegation of legislative power, beyond the cases to which we have referred, and the principles on which they are based."³⁶

§ 106. Municipalities may not be authorized to make or amend their charters.—A statute of Michigan provided that, on the recommendation of the mayor of Detroit and the approval of the council by a two-thirds vote, or on petition of five thousand electors of the city, it should be the duty of the council to submit to popular vote any amendment or amendments to the charter of the city so recom-

³⁶ *Bradshaw v. Lankford*, 73 Md. 428, 21 Atl. 66, 25 Am. St. Rep. 602, 11 L. R. A. 582.

mended or petitioned for, and if the same were adopted by a majority vote they should be effective as such amendments. This was held to be a clear delegation of the legislative power.³⁷

§ 107. **Other decisions on the validity of statutes.**— A law will not be declared invalid on the admission or concession of counsel, either as to matters of fact or matters of law, for the rights of many others, perhaps of all the people of the state, may depend upon or be affected by the question.³⁸ A law is to be tested, not by what has been done under it, but by what may be done under it.³⁹ When a section of a statute is invalid because not within the title, the incorporation of the section in a code or revision makes it valid from the adoption of such code or revision.⁴⁰ So the approval of a territorial act by congress validates a section of the act void for the same reason.⁴¹ Where a local law is invalid when passed because in conflict with a general law, it is not made valid by a subsequent amendment of the general law so as to avoid such conflict.⁴² So if an act is invalid when passed because in conflict with the constitution, it is not made valid by a change of the constitution which does away with the conflict.⁴³ And when an ordinance is void because in conflict with a statute, the repeal of the statute does not validate the ordinance.⁴⁴ The failure of an editor, authorized to make a compilation of the general statutes of

³⁷ *Elliott v. Detroit*, 121 Mich. 611, 84 N. W. 820.

³⁸ *Fullington v. Williams*, 98 Ga. 807, 27 S. E. 183; *Jones v. Madison County*, 72 Miss. 777, 18 So. 87; *State v. Aloe*, 153 Mo. 466, 54 S. W. 494; *State v. Withrow*, 154 Mo. 397, 55 S. W. 460; *Rodman-Heath Cotton Mills v. Waxhaw*, 130 N. C. 293, 41 S. E. 488.

³⁹ *Minneapolis Brewing Co. v. McGellivray*, 104 Fed. 258, 269.

⁴⁰ *Parks v. State*, 110 Ga. 760, 36 S. E. 73; *Daniel v. State*, 114 Ga.

533, 40 S. E. 707; *McFarland v. Donaldson*, 115 Ga. 567, 41 S. E. 1000; *Newgass v. Atlantic & D. Ry. Co.*, 56 Fed. 676.

⁴¹ *Karasek v. Peier*, 22 Wash. 419, 61 Pac. 33, 50 L. R. A. 345.

⁴² *Jones v. McCaskill*, 112 Ga. 453, 37 S. E. 724.

⁴³ *State v. Tuffy*, 20 Nev. 427, 22 Pac. 1054, 19 Am. St. Rep. 374; *Comstock Mill & Min. Co. v. Allen*, 21 Nev. 325, 31 Pac. 434.

⁴⁴ *Erie v. Brady*, 150 Pa. St. 462, 24 Atl. 641.

a state, to include a statute in such compilation, does not affect its validity or binding force.⁴⁵ The validity of a statute must be determined from the statute itself and facts of which the court will take judicial notice.⁴⁶ A change or amendment of the constitution imposing new limitations upon the legislature does not affect existing laws.⁴⁷ An act of 1890 authorized a city to issue bonds for the construction of a sewerage system, provided the issue was approved by a majority of the electors of the city at an election held for that purpose, on the petition of one-third of the real estate owners of the city. The constitution of 1895 required that the petition for an election in such cases should be signed by a majority of the freeholders of the city as shown by its tax books. This was held not to nullify the prior law, but in effect to amend it in that respect, and if the constitution was complied with the power could be exercised.⁴⁸ "In considering the constitutionality of a statute, courts will take judicial notice of all facts relevant to the question."⁴⁹ One not affected by the invalidity of a statute cannot raise the question of its validity.⁵⁰

§ 108. Acts done under an invalid statute.—It has been said that "an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."⁵¹ This is

⁴⁵ *Fenton v. Yule*, 27 Neb. 758, 43 N. W. 1140.

⁴⁶ *Tenement House Department v. Moeschen*, 89 App. Div. 526.

⁴⁷ *Sayers v. Wilmington & N. R. Co.*, 3 Penn. (Del.) 249; *State v. Dorr*, 82 Me. 212, 19 Atl. 171; *Black River Imp. Co. v. Holway*, 87 Wis. 584, 59 N. W. 126.

⁴⁸ *Cleveland v. Spartenburg*, 54 S. C. 83, 31 S. E. 871.

⁴⁹ *State v. Westfall*, 85 Minn. 437, 89 N. W. 175, 89 Am. St. Rep. 571; *Green v. Fresno County*, 95 Cal.

320, 30 Pac. 544; *Topeka v. Gillett*, 32 Kan. 431, 4 Pac. 800; *State v. Ames*, 87 Minn. 23, 91 N. W. 18.

⁵⁰ *Shehane v. Bailey*, 110 Ala. 808, 20 So. 359; *Jones v. Black*, 48 Ala. 540; *Dejarnette v. Haynes*, 23 Miss. 600; *State v. Gerhardt*, 145 Ind. 439, 44 N. E. 469; *Williamson v. Carleton*, 51 Me. 449; *State v. Stevenson*, 18 Neb. 416, 25 N. W. 585; *Turnquist v. Cass County Drainage Com'rs*, 11 N. D. 514, 92 N. W. 852.

⁵¹ *Norton v. Shelby County*, 118

undoubtedly the logic of the situation, but logic does not always hold in legal questions. Pursuant to an act of the legislature, the state of Washington purchased and paid for a tract of land for an insane asylum and received a deed of the same. Subsequently the act was declared to be unconstitutional. The state then brought a suit to quiet title to the land, and the vendors set up that the deed was void and claimed a decree accordingly. The court ruled against the defense, holding that the vendors could not keep the money and have the land. It was intimated that the deed might be avoided in a proper proceeding, and on tender of the purchase-money.⁵² The court says: "Nor does the fact that the act of 1893 was declared unconstitutional and void, after the purchase made under it had been consummated and the title vested in the state, render the deed a nullity. The purchase was accomplished under color of lawful authority, and at a time when the law was presumptively valid, and therefore must be regarded as having been lawfully made."

The city of Philadelphia laid out a street under a statute afterwards declared void.⁵³ Before the decision gas pipes were laid in the street by permission of the city. After the decision the owner of the fee brought suit to enjoin the

U. S. 425, 441, 6 S. C. Rep. 1121, 80 L. Ed. 178. To same effect: *Boales v. Ferguson*, 55 Neb. 565, 76 N. W. 18; *Finders v. Bodle*, 58 Neb. 57, 78 N. W. 480; *Wyandotte Co. Com'rs v. Kansas City, etc. R. R. Co.*, 5 Kan. App. 43, 46 Pac. 1013, 47 Pac. 826; *Cooley, Const. Lim.*, p. 222 and cases cited.

⁵² *State v. Bliza*, 37 Ore. 404, 61 Pac. 735.

⁵³ *King v. Philadelphia Co.*, 154 Pa. St. 160, 26 Atl. 308, 35 Am. St. Rep. 817, 3 L. R. A. 141. The court says: "If no question of the constitutional power of a city to do municipal work, such as the opening or grading and paving of streets,

the construction of drains and sewers, the erection of municipal buildings, the introduction of gas and water works, arises until years have elapsed after such work is done, it could not be tolerated that because the power is ultimately held to have been in excess of the lawful authority of the city, that such streets must be closed and abandoned, or the sewers and drains destroyed, or the gas and water works closed, or the municipal buildings torn down. Such municipal works having been done under color of lawful authority, when no question as to the validity of the authority was raised, must

further maintenance of the pipes, and for damages. The court held that what had been done under the act before it was declared void should be deemed valid, and dismissed the bill.

be regarded as lawfully done. The opening of a street ordinarily is followed by the erection of buildings on both sides, by the laying of gas and water pipes, and the construction of sewers. If, after all this has taken place, it is discovered, and judicially decided, that the law under which the municipal authorities have acted in the premises is unconstitutional, surely it cannot be that all the improvements, works and buildings, carried on and constructed under apparent legal authority, must be abandoned or destroyed."

CHAPTER IV.

CONSTITUTIONAL REQUIREMENT THAT NO ACT EMBRACE MORE THAN ONE SUBJECT AND THAT IT BE EXPRESSED IN THE TITLE

§ 109 (76). Substantial agreement of constitutional provisions — Exceptions.—In the constitutions of a large majority of the states are provisions relating to the title and singleness of the subject-matter of legislative acts. It is not uniformly expressed in the same words, but it is in substance the same — that no law shall embrace more than one subject, which shall be expressed in the title.¹

¹ Alabama — 1865: Art. 4, sec. 2. Each law shall embrace but one subject, which shall be described in the title.

1868: Each law shall contain but one subject, which shall be clearly expressed in the title. Art. 4, sec. 2.

1875, adds: Except general appropriation bills, general revenue bill, and bills adopting a code, digest or revision of statutes.

California — 1849: Art. 4, sec. 25. Every law enacted by the legislature shall express but one object, and that shall be expressed in the title.

1879: Art. 4, sec. 24. Every act shall embrace but one subject, which subject shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act

shall be void only as to so much thereof as shall not be expressed in its title. No law shall be revised or amended by reference to its title; but in such case the act revised or section amended shall be re-enacted and published at length as revised or amended.

Colorado: Art. 5, sec. 21. No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

Florida — 1868: Art. 4, sec. 14. Each law enacted in the legislature shall embrace but one subject, and matter properly

In the constitutions of New York, Wisconsin, and in the Illinois constitution of 1848, the provision is confined to private and local laws. It will be noticed that in several the injunction is against embracing more than one "object" in a bill. In many instances the subject or object is required

connected therewith, which subject shall be briefly expressed in the title.

Georgia — 1865: Nor shall any law or ordinance pass which refers to more than one subject-matter or contains matter different from what is expressed in the title thereof. Art. 2, sec. 4.

Idaho: Art. 8, sec. 16. Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title.

Illinois — 1848: Art. 8, sec. 28. No private or local law which may be passed by the general assembly shall embrace more than one subject, and that shall be expressed in the title.

1870: Art. 4, sec. 18. No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title; but if any subject shall be embraced in an act which shall not be expressed in the title, etc. (as in Colorado).

Indiana — 1851: Art. 4, sec. 19. Every act shall embrace but one subject and matters prop-

erly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an act, etc. (as in Colorado constitution).

Iowa — 1846: Art. 8, sec. 26. Same as in Indiana.

1857: Art. 8, sec. 29. Same as in Indiana.

Kansas — 1855: Art. 4, sec. 14. Every act shall contain but one subject, which shall be clearly expressed in its title.

1857: Art. 5, sec. 20. Every law enacted by the legislature shall embrace but one subject, and that shall be expressed in its title, and any extraneous matter introduced in a bill which shall pass shall be void.

1859: Art. 2, sec. 16. No bill shall contain more than one subject, which shall be clearly expressed in its title.

Kentucky — 1850: No law shall relate to more than one subject, and that shall be expressed in the title. Art. 2, sec. 37.

1891: Sec. 51. No law enacted by the general assembly shall relate to more than one subject, and that shall be expressed in the title, and no law shall be revised, amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revised,

to be "*clearly*" and in one "*briefly*" expressed in the title. The provision that only one subject shall be embraced in an act is in some states qualified by adding "and matters properly connected therewith."

amended, extended or conferred, shall be re-enacted and published at length.

Louisiana—Every law enacted by the legislature shall embrace but one object, and that shall be expressed in the title.

1852: Art. 115.

1864: Art. 118.

1868: Art. 114. Every law shall express its object or objects in its title.

Maryland—1851: Art. 8, sec. 17. Every law enacted by the legislature shall embrace but one subject, and that shall be described in the title.

1864: Art. 3, sec. 28; art. 8, sec. 29.

Michigan—1850: Art. 4, sec. 20. No law shall embrace more than one object, which shall be expressed in its title.

Minnesota—1857: Art. 4, sec. 27. No law shall embrace more than one subject, which shall be expressed in its title.

Missouri—1865: Art. 4, sec. 32. No law enacted by the general assembly shall relate to more than one subject, and that shall be expressed in the title; but if any subject embraced in an act be not expressed in the title, such act shall be void only as to so much thereof as is not so expressed. *State v. Miller*, 45 Mo. 495.

Montana—Art. 5, sec. 23. No bill, except general appropria-

tion bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but, if any subject shall be embraced in any act which shall not be expressed in the title, such shall be void only as to so much thereof as shall not be so expressed."

Nebraska—1866: Art. 2, sec. 19. No bill shall contain more than one subject, which shall be clearly expressed in its title."

1875: Art. 3, sec. 11. No bill shall contain more than one subject, and the same shall be clearly expressed in its title.

Nevada—1864: Art. 4, sec. 17. Each law enacted by the legislature shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title.

New Jersey—1844: Art. 4, sec. 7. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

New York—1846: Art. 3, sec. 16. No private or local bill which may be passed by the legisla-

§ 110 (77). The former constitution of Georgia merely inhibited the passage of any law containing matter different from that expressed in its title. Under it, according to the rulings and practice in that state, when there was added to

ture shall embrace more than one subject, and that shall be expressed in the title.

Ohio—1851: Art. 2, sec. 16. No bill shall contain more than one subject, which shall be clearly expressed in its title.

Oregon—1857: Art. 4, sec. 20. Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

Pennsylvania—Added in 1864 by amendment to constitution of 1838, art. 2, sec. 3. No bill shall be passed by the legislature containing more than one subject, which shall be expressed in the title, except appropriation bills.

1878: Art. 8, sec. 8. No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title.

South Carolina—Every act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.

1868: Art. 2, sec. 20.

Texas—1845: Art. 7, sec. 24. Every law enacted by the legislature shall embrace but one object, and that shall be expressed in the title.

1866: Art. 7, sec. 24.

1868: Art. 12, sec. 17.

1876: Art. 8, sec. 35. No bill (except general appropriation bills which may embrace the various subjects and accounts for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

Tennessee—1870: Art. 2, sec. 17. No bill shall become a law which embraces more than one subject; that subject to be expressed in the title.

Virginia—1850: Art. 4, sec. 16. No law shall embrace more than one object, which shall be expressed in its title.

1864: Art. 4, sec. 16.

1870: Art. 5, sec. 15.

West Virginia—1861-1863: Same as in Virginia.

1872: Art. 6, sec. 30. No act hereafter passed shall embrace more than one object, and that shall be expressed in the title. But if any object shall be em-

the words in the title the phrase "and for other purposes," it gave an unlimited capacity to the body of the act.² The present constitution, however, prohibits the passage of any law which refers to more than one subject-matter or contains matter different from what is expressed in the title.

§ 111 (78). **The mischief intended to be remedied — The purpose of these restrictive provisions.**— In the construction and application of this constitutional restriction the courts have kept steadily in view the correction of the mischief against which it was aimed. The object is to prevent the practice, which was common in all legislative bodies where no such restriction existed, of embracing in the same bill incongruous matters having no relation to each other, or to the subject specified in the title, by which measures were often adopted without attracting attention.³ Such distinct subjects represented diverse interests, and were combined in order to unite the members of the legislature who favored either in support of all.⁴ These combinations were corruptive of the legislature and dangerous to the state.⁵ Such omnibus bills sometimes included more than a hundred sections on as many different subjects, with a title appropriate to the first section, "and for other purposes."⁶

The failure to indicate in the title of the bill the object

braced in an act which is not so expressed, the act shall be void only as to so much thereof as shall not be so expressed.

Wisconsin — 1848: Art. 4, sec. 18. No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title.

Wyoming — Art. 3, sec. 24. No bill except general appropriation bills and bills for the codification and general revision of the laws shall be passed, contain-

ing more than one subject, which shall be clearly expressed in the title.

² *Martin v. Broach*, 6 Ga. 21, 50 Am. Dec. 306; *Mayor, etc. v. State*, 4 Ga. 26; *Board of Education v. Barlow*, 49 Ga. 241; *Black v. Cohen*, 52 Ga. 626.

³ *Louisiana v. Pilsbury*, 105 U. S. 278, 26 L. Ed. 1090.

⁴ *Shields v. Bennett*, 8 W. Va. 83; *Town of Fishkill v. F. & B. Co.*, 22 Barb. 634.

⁵ *People v. Mahaney*, 13 Mich. 494.

⁶ *Yeager v. Weaver*, 64 Pa. St. 425.

intended to be accomplished by the legislation often resulted in members voting ignorantly for measures which they would not knowingly have approved. And not only were legislators thus misled, but the public also; so that legislative provisions were stealthily pushed through in the closing hours of a session, which, having no merit to commend them, would have been made odious by popular discussion and remonstrance if their pendency had been seasonably announced. The constitutional clause under discussion is intended to correct these evils; to prevent such corrupting aggregations of incongruous measures by confining each act to one subject or object; to prevent surprise and inadvertence by requiring that subject or object to be expressed in the title.⁷

⁷ *Montgomery, etc. Ass'n v. Robinson*, 69 Ala. 413; *Stein v. Leeper*, 78 Ala. 517; *Ballentyne v. Wickersham*, 75 Ala. 539; *City Council v. National B. & L. Ass'n*, 108 Ala. 336, 18 So. 816; *Lindsay v. U. S. Savings & L. Ass'n*, 120 Ala. 156, 24 So. 171, 42 L. R. A. 783; *Mobile Transportation Co. v. Mobile*, 128 Ala. 335, 30 So. 645, 86 Am. St. Rep. 143; *Ex parte Liddell*, 98 Cal. 633, 29 Pac. 251; *People v. Fleming*, 7 Colo. 230, 3 Pac. 70; *Catron v. County Com'rs*, 18 Colo. 553, 33 Pac. 518; *State v. Green*, 36 Fla. 154, 18 So. 334; *Brieswick v. Mayor*, 51 Ga. 639; *Blair v. State*, 90 Ga. 326, 17 S. E. 96, 35 Am. St. Rep. 206; *People v. Institute*, 71 Ill. 229; *Robinson v. Skipworth*, 23 Ind. 312; *Grubbs v. State*, 24 Ind. 295; *Henderson v. London & Lancashire Ins. Co.*, 135 Ind. 23, 34 N. E. 565, 41 Am. St. Rep. 410, 20 L. R. A. 827; *State v. Gerhardt*, 145 Ind. 439, 44 N. E. 469; *State v. County Judge*, 2 Iowa, 282; *State v. Commonwealth*, 8 Bush, 108; *Rogers v. Jacob*, 88 Ky. 502, 11 S. W. 513; *Conley v. Commonwealth*, 98 Ky. 125, 32 S. W. 285; *Walker v. Caldwell*, 4 La. Ann. 298; *Davis v. State*, 7 Md. 160; *Keller v. State*, 11 Md. 531, 69 Am. Dec. 226; *Parkinson v. State*, 14 Md. 184, 74 Am. Dec. 522; *Mayor v. State*, 30 Md. 118; *County Com'rs v. Franklin R. R. Co.*, 34 Md. 163; *McGrath v. State*, 46 Md. 633; *County Com'rs v. Meekins*, 50 Md. 39; *State v. Norris*, 70 Md. 91, 16 Atl. 445; *People v. Mahaney*, 13 Mich. 494; *Ryerson v. Utley*, 16 Mich. 269; *Johnson v. Harrison*, 47 Minn. 575, 50 N. W. 923, 28 Am. St. Rep. 382; *Winters v. Duluth*, 82 Minn. 127, 84 N. W. 788; *St. Louis v. Teifel*, 42 Mo. 578; *State v. Ranson*, 73 Mo. 78; *State v. Miller*, 100 Mo. 439, 13 S. W. 677; *Hotchkiss v. Marion*, 12 Mont. 218, 29 Pac. 821; *State v. Anaconda Copper Min. Co.*, 23 Mont. 498, 59 Pac. 854; *White v. Lincoln*, 5 Neb. 505; *Kansas City, etc. R. Co. v. Frey*, 30 Neb. 790, 47 N. W. 87; *Van Horn v. State*, 46

The supreme court of Minnesota, in speaking of the provision, says: "Its purposes are two: *first*, to prevent what is called 'logrolling legislation' or 'omnibus bills,' by which a number of different and disconnected subjects are united in one bill, and then carried through by a combination of interests; *second*, to prevent surprise and fraud upon the people and the legislature by including provisions in a bill whose title gives no intimation of the nature of the proposed legislation, or of the interests likely to be affected by its becoming a law; and, in deciding whether an act is obnoxious to this provision of the constitution, a very good test to apply is whether it is within the mischiefs intended to be remedied."⁸

The supreme court of Colorado, after referring to the objects of the provision, in similar language says: "So far as the first of the above evils is concerned, unfortunately, neither this nor any other provision yet devised upon the subject has produced the desired result. Even a casual in-

Neb. 62, 64 N. W. 365; Cooperrider v. State, 46 Neb. 84, 64 N. W. 372; State v. Tibbets, 52 Neb. 228, 71 N. W. 990, 66 Am. St. Rep. 492; Nebraska L. & B. Ass'n v. Perkins, 61 Neb. 254, 85 N. W. 67; State v. Silver, 9 Nev. 227; State v. Union, 33 N. J. L. 850; Gifford v. N. J. R. R. Co., 2 Stockt. 172; Sun Mut. Ins. Co. v. Mayor, 8 N. Y. 241; Harris v. People, 59 N. Y. 602; Fishkill v. F. & B. Co., 22 Barb. 634; State v. Woodmansee, 1 N. D. 246, 46 N. W. 970, 11 L. R. A. 420; Power v. Kitching, 10 N. D. 254, 86 N. W. 737; Clemensen v. Peterson, 35 Ore. 47, 56 Pac. 1015; Yeager v. Weaver, 64 Pa. St. 427; Dorsey's Appeal, 72 Pa. St. 192; Commonwealth v. Samuels, 164 Pa. St. 462, 29 Atl. 909; Commonwealth v. Severus, 164 Pa. St. 462, 30 Atl. 391; In re Sugar Notch Borough, 192 Pa. St. 349, 48 Atl. 985; State v. Morgan, 2 S. D. 32, 48 N. W. 314; State v. Becker, 3 S. D. 29, 51 N. W. 1018; State v. Lusater, 9 Baxt. 584; Tadlock v. Eccles, 20 Tex. 782, 73 Am. Dec. 213; Henrico Co. Sup'rs v. McGruder, 84 Va. 828, 6 S. E. 232; Commonwealth v. Brown, 91 Va. 762, 21 S. E. 357; Percival v. Cowychee, etc. Dist., 15 Wash. 480, 46 Pac. 1035; Slack v. Jacob, 8 W. Va. 640; In re Fourth Judicial District, 4 Wyo. 133, 32 Pac. 850; Omaha v. U. P. Ry. Co., 73 Fed. 1013, 20 C. C. A. 219, 36 U. S. App. 615; Mississippi, etc. Co. v. Prince, 10 Am. & Eng. Corp. Cas. 391.

⁸ Johnson v. Harrison, 47 Minn. 575, 50 N. W. 923, 28 Am. St. Rep. 382.

vestigation into the methods adopted by modern legislation will show that the passage of any bill upon its intrinsic merits is of rare occurrence, logrolling being as successfully carried on to secure the passage of a number of bills upon different subjects as if the same legislation could, as formerly, be included in a single bill. The constitutional provision, it is believed, however, does furnish a remedy for the other evils against which it is directed.”⁹

§ 112 (79). **Regarded as mandatory.**— The efficiency of this constitutional remedy to cure the evil and mischief which has been pointed out depends on judicial enforcement; on this constitutional injunction being regarded as mandatory, and compliance with it essential to the validity of legislation. The mischief existed notwithstanding the sworn official obligation of legislators; it might be expected to continue notwithstanding that that obligation is formulated and emphasized in this constitutional injunction, if it be construed as addressed exclusively to them, and only directory. It would, in a general sense, be a dangerous doctrine to announce that any of the provisions of the constitution may be obeyed or disregarded at the mere will or pleasure of the legislature, unless it is clear beyond all question that such was the intention of the framers of that instrument. It would seem to be a lowering of the proper dignity of the fundamental law to say that it descends to prescribing rules of order in unessential matters which may be followed or disregarded at pleasure.¹⁰ The fact is this: that whatever constitutional provision can be looked upon as directory merely is very likely to be treated by the legislature as if it was devoid of moral obligation, and to be therefore habitually disregarded.¹¹

§ 113 (80). The provision has been held mandatory in Tennessee on its particular language. Thus, in *Cannon v.*

⁹ *Catron v. County Com'rs*, 18 Colo. 558, 88 Pac. 518, 558.

¹⁰ *Commissioners of Sedgwick Co. v. Bailey*, 13 Kan. 607.

¹¹ *Cooley*, Const. Lim. *78.

Mathes,¹² Nicholson, C. J., called attention to the words: "No bill shall become a law which embraces more than one subject." "This," he said, "is a direct, positive and imperative limitation upon the power of the legislature. It matters not that a bill has passed through three readings in each house on different days, and has received the approval of the governor, still it is not a law of the state if it embraces more than one subject." So, in *Central & G. R. Co. v. People*,¹³ the last clause in the provision, as adopted in Colorado and several other states, was held decisive. That clause is, "but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."¹⁴ But in all the states having such a restrictive provision in which the question has arisen, except Ohio,¹⁵ and California under her former constitution,¹⁶ the command has been held to be mandatory.¹⁷

§ 114 (81). The courts possess and exercise the same power to expound and apply the provision of the constitution under

¹² 8 Heisk. 504.

¹³ 5 Colo. 39.

¹⁴ Art. 5, sec. 21.

¹⁵ *Miller v. State*, 8 Ohio St. 475; *Pim v. Nicholson*, 6 Ohio St. 176; *Steamboat Northern Indiana v. Milliken*, 7 Ohio St. 383; *Lehman v. McBride*, 15 Ohio St. 573; *State v. Covington, etc.*, 29 Ohio St. 102; *Oshe v. State*, 37 Ohio St. 500.

¹⁶ *Washington v. Page*, 4 Cal. 388; *Pierpont v. Crouch*, 10 Cal. 315.

¹⁷ *People v. Hills*, 35 N. Y. 449; *Gaskin v. Meek*, 42 N. Y. 186; *People v. Allen*, 42 N. Y. 378; *People v. Lawrence*, 36 Barb. 185; *Huber v. People*, 49 N. Y. 132; *People v. Parks*, 58 Cal. 635; *People v. Fleming*, 7 Colo. 230, 3 Pac. 70; *Central & G. R. Co. v. People*, 5 Colo. 39, 9 Am. & Eng. T. R. R. Cas. 546; *Montgomery, etc. Ass'n v. Robin-*

son, 69 Ala. 413; *Supervisors v. Heenan*, 2 Minn. 330; *Cannon v. Hemphill*, 7 Tex. 184; *Cannon v. Mathes*, 8 Heisk. 504; *State v. McCann*, 4 Lea, 1; *Shields v. Bennett*, 8 W. Va. 85; *Phillips v. Covington, etc. Co.*, 2 Met. (Ky.) 221; *Commissioners of Sedgwick Co. v. Bailey*, 13 Kan. 607; *Weaver v. Lapsley*, 43 Ala. 224; *Union Passenger Ry. Co.'s Appeal*, 81* Pa. St. 91; *State v. Miller*, 45 Mo. 495; *Tadlock v. Eccles*, 20 Tex. 782, 73 Am. Dec. 213; *City of San Antonio v. Gould*, 34 Tex. 49; *State v. McCracken*, 43 Tex. 383; *Pennington v. Woolfolk*, 79 Ky. 13; *Ex parte Liddell*, 93 Cal. 633, 29 Pac. 251; *State v. Morgan*, 2 S. D. 32, 48 N. W. 314; *Saunders v. Savage*, 108 Tenn. 340, 67 S. W. 471.

consideration as they do to construe and enforce any other. It is as fatal to an act to be framed contrary to the constitution in its title and by embracing a plurality of subjects, as it would be to insert provisions to operate contrary to its other limitations.¹⁸

The courts of Ohio, in holding this constitutional clause directory, are not to be understood as conceding that it is without obligatory force. On the contrary it is declared to be a direction to the general assembly which each member is under the solemn obligation of his oath to observe and obey. To the legislature it is of equal obligation with a mandatory provision, but a failure to observe it does not render the act void. It is there a rule of decision based on grounds of expediency.¹⁹

The present constitution of California, besides adding to the clause as it stood in the former constitution, another direction implying that provisions in an act on a subject not expressed in the title are void, contains a general provision that "the provisions of this constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise."²⁰

The constitutional provision under consideration does not apply to statutes lawfully enacted before its adoption,²¹ nor to city ordinances,²² unless the constitution is broad enough in terms to embrace municipal legislation, or the same requirement is enacted in the charter;²³ nor does it apply to resolutions proposing constitutional amendments.²⁴

§ 115 (82). Liberally construed to sustain legislation not within the mischief.— The courts with great unanim-

¹⁸ Id.; *Davis v. State*, 7 Md. 151, 61 Am. Dec. 831, and reporter's note, 340.

¹⁹ *State v. Covington*, 29 Ohio St. 102.

²⁰ Const. 1879, art. 1, sec. 22; *Ex parte Liddell*, 98 Cal. 688, 29 Pac. 251.

²¹ *Rogers v. Windoes*, 48 Mich. 628.

²² *Ex parte Haskell*, 112 Cal. 412, 44 Pac. 725, 82 L. R. A. 527; *Topeka v. Raynor*, 61 Kan. 10, 58 Pac. 557; *Tarkio v. Cook*, 120 Mo. 1, 25 S. W. 202, 41 Am. St. Rep. 678; *State v. Gibbs*, 60 S. C. 500, 39 S. E. 1.

²³ *Baumgartner v. Hasty*, 100 Ind. 575, 50 Am. Rep. 880.

²⁴ *Julius v. Callahan*, 68 Minn. 154, 65 N. W. 267.

ity enforce this constitutional restriction in all cases falling within the mischiefs intended thereby to be remedied. And, in cases not within those mischiefs, they construe it liberally to give convenient and necessary freedom, so far as is compatible with the remedial measure, to the law-making power. They agree that whilst it is necessary to so expound this provision as to prevent the evils it was designed to remove, it is no less desirable to avoid the opposite extreme, the necessary effect of which would be to embarrass the legislature in the legitimate exercise of its powers, by compelling a needless multiplication of separate acts as well as to introduce a perplexing uncertainty as to the validity of many important laws which must be daily acted upon.²⁵ To facilitate proper legislation, it will not be interpreted in a strict, narrow or technical sense,²⁶ but reasonably.²⁷ "This provision of the constitution ought not to receive a narrow or technical construction, which will embarrass legislation by making laws unnecessarily restrictive in their scope and operation; but, like all provisions of the organic law, it should be fairly and liberally interpreted and enforced, so that it will serve to prevent the abuses at which it was aimed without placing unnecessary restraints upon legislative action."²⁸

²⁵ *Parkinson v. State*, 14 Md. 184, 194, 74 Am. Dec. 523; *People v. Mahaney*, 13 Mich. 481, 495; *City of St. Louis v. Tiefel*, 42 Mo. 578; *Montgomery Mut. B. & L. Asso. v. Robinson*, 69 Ala. 418; *In re Wakker*, 3 Barb. 162; *Sharp v. Mayor, etc.*, 31 Barb. 572; *People v. Ins. Co.*, 19 Mich. 893; *Atkinson v. Duffy*, 16 Minn. 49; *State v. Lasater*, 9 Baxt. 584; *Smith v. Commonwealth*, 8 Bush, 108; *Mayor, etc. of Annapolis v. State*, 30 Md. 112; *Ryerson v. Utley*, 16 Mich. 269; *State ex rel. Atty. Gen. v. Ranson*, 78 Mo. 78; *Slack v. Jacob*, 8 W. Va. 640; *State v. Town*

of Union, 38 N. J. L. 350; *Shields v. Bennett*, 8 W. Va. 83.

²⁶ *Municipality No. 8 v. Michoud*, 6 La. Ann. 605.

²⁷ *Ryerson v. Utley*, 16 Mich. 269.

²⁸ *South St. Paul v. Lamprecht Bros. Co.*, 88 Fed. 449, 451, 81 C. C. A. 585. Numerous cases announce substantially the same rule of construction: *Judson v. Bessemer*, 87 Ala. 240, 6 So. 267; *Barnhill v. Teague*, 96 Ala. 207, 11 So. 444; *Randolph v. Builders' & Painters' Supply Co.*, 106 Ala. 501, 17 So. 721; *State v. Rogers*, 107 Ala. 444, 19 So. 909; *State v. Street*, 117 Ala. 203, 28

In *State v. Miller*²⁹ the court say: "The courts in all the states where a like or similar provision exists have given a very liberal interpretation, and have endeavored to construe it so as not to limit and cripple legislative enactment

So. 807; *Ex parte Liddell*, 93 Cal. 633, 29 Pac. 251; *Beach v. Von Detten*, 139 Cal. 462, 73 Pac. 187; *Davidson v. Von Detten*, 139 Cal. 467, 73 Pac. 189; *In re Breene*, 14 Colo. 401, 24 Pac. 3; *Sessions v. State*, 115 Ga. 18, 41 S. E. 259; *People v. Blue Mountain Joe*, 129 Ill. 870, 21 N. E. 923; *McGurn v. Board of Education*, 138 Ill. 122, 24 N. E. 529; *Ritchie v. People*, 155 Ill. 98, 40 N. E. 454, 462, 46 Am. St. Rep. 815, 29 L. R. A. 79; *Hundall v. Ham*, 173 Ill. 76, 49 N. E. 985; *Bobel v. People*, 173 Ill. 19, 50 N. E. 822, 64 Am. St. Rep. 64; *Manchester v. People*, 178 Ill. 285, 52 N. E. 964; *Park v. Modern Woodmen*, 181 Ill. 214, 54 N. E. 932; *People v. People's Gas Light & C. Co.*, 205 Ill. 482, 68 N. E. 950; *Benson v. Christian*, 129 Ind. 535, 29 N. E. 26; *State v. Kolsem*, 130 Ind. 434, 29 N. E. 595, 14 L. R. A. 566; *Isenhour v. State*, 157 Ind. 517, 62 N. E. 40, 87 Am. St. Rep. 228; *Cook v. Marshall County*, 119 Iowa, 384, 93 N. W. 372; *State v. Sanders*, 42 Kan. 228, 21 Pac. 1078; *In re Pinckney*, 47 Kan. 89, 27 Pac. 179; *Blaker v. Hood*, 53 Kan. 499, 36 Pac. 1115, 24 L. R. A. 854; *Otto Gas Engine Works v. Hare*, 64 Kan. 78, 67 Pac. 444; *Wilson v. Herrick*, 64 Kan. 607, 68 Pac. 72; *Conley v. Commonwealth*, 98 Ky. 125, 32 S. W. 285; *Nunn v. Citizens' Bank*, 107 Ky. 262, 58 S. W. 665; *State v. Norris*, 70 Md. 91, 16 Atl. 445; *State v. Madson*, 48 Minn. 438, 45 N. W. 856; *Boyle v. Vanderhoof*, 45 Minn. 81, 47 N. W. 396; *Putnam v. St. Paul*, 75 Minn. 514, 78 N. W. 90; *Winters v. Duluth*, 82 Minn. 127, 84 N. W. 788; *Ek v. St. Paul Permanent Loan Co.*, 84 Minn. 245, 87 N. W. 844; *State v. Miller*, 100 Mo. 439, 13 S. W. 677; *Hotchkiss v. Marion*, 12 Mont. 218, 29 Pac. 821; *Western Ranches v. Custer County*, 28 Mont. 278; *Kansas City & O. R. Co. v. Frey*, 30 Neb. 790, 47 N. W. 87; *State v. Washoe Co. Com'rs*, 22 Nev. 399, 41 Pac. 145; *In re Haynes*, 54 N. J. L. 6, 23 Atl. 923; *Astor v. Arcade Ry. Co.*, 118 N. Y. 93, 20 N. E. 594, 2 L. R. A. 789; *Wrought Iron Bridge Co. v. Attica*, 119 N. Y. 204, 23 N. E. 542; *State v. Woodmanse*, 1 N. D. 246, 46 N. W. 970, 11 L. R. A. 420; *Power v. Kitching*, 10 N. D. 254, 86 N. W. 787; *Eaton v. Guarantee Co.*, 11 N. D. 79, 88 N. W. 1029; *State v. Koshland*, 25 Ore. 178, 85 Pac. 32; *In re Sugar Notch Borough*, 192 Pa. St. 349, 48 Atl. 985; *Floyd v. Perrin*, 30 S. C. 1, 8 S. E. 14, 2 L. R. A. 242; *State v. Morgan*, 2 S. D. 32, 48 N. W. 314; *State v. Becker*, 3 S. D. 29, 51 N. W. 1018; *Frazier v. Railway Co.*, 88 Tenn. 138, 12 S. W. 537; *Powell v. Supervisors*, 88 Va. 707, 14 S. E. 543; *Commonwealth v. Brown*, 91 Va. 762, 21 S. E. 357; *Lancy v. King Co.*, 15 Wash. 9, 45 Pac. 645, 34 L. R. A. 817; *Diana Shooting Club v. Lamereux*, 114 Wis. 44, 89 N. W. 880, 90 Am. St.

²⁹ 45 Mo. 497.

any further than what was necessary by the absolute requirement of the law.”³⁰

The supreme court of Louisiana, in commenting on an argument of counsel which demanded a strict construction, uses this language: “We think the argument invokes an interpretation too rigorous and technical. If in applying it we should follow the rules of a nice and fastidious verbal criticism, we should often frustrate the action of the legislature without fulfilling the intention of the framers of the constitution.”³¹ The intent of this provision of the constitution is to prevent the union in one act of incongruous matter, and of objects having no connection and relation; to require singleness of subject-matter, and an indicative or suggestive title to prevent surprise by having matter of one nature embraced in a bill, while its title is silent or expresses another. But there must be some limit to the division of matter into separate bills or acts.³² A reasonable construction permits the single subject to be comprehensive enough for practical purposes, for it only necessitates the separation of entireties, and great latitude is allowed in stating the subject in the title.

But a disregard of the constitutional restriction even in an otherwise meritorious bill will be fatal.³³ The departure, however, must be plain and manifest, and all doubts will be resolved in favor of the law.³⁴ The objections should be grave, and the conflict between the statute and the constitution palpable, before the judiciary should disregard a legislative enactment upon the sole ground that it embraced more than one subject, or, when it contains but one

Rep. 833; *In re Fourth Judicial District*, 4 Wyo. 133, 32 Pac. 850; *Detroit v. Detroit Citizens' St. Ry. Co.*, 184 U. S. 368, 22 S. C. Rep. 410, 46 L. Ed. 592; *West Plaines v. Sage*, 69 Fed. 943, 16 C. C. A. 558, 32 U. S. App. 725; *Mexican National Ry. Co. v. Jackson*, 118 Fed. 549, 55 C. C. A. 315.

³⁰ Cooley's Const. Lim. 176.

³¹ *Succession of Lanzetti*, 9 La. Ann. 333.

³² *State v. County Judge*, 2 Iowa, 280.

³³ *People v. Denahy*, 20 Mich. 349; *State v. Tucker*, 46 Ind. 355.

³⁴ *State v. County Judge*, 2 Iowa, 282.

subject, on the ground that it is not sufficiently expressed in the title.³⁵ Legislation is also liberally construed to render it, in proper cases, conformable with this feature of the fundamental law. This liberality will be fully illustrated in the ensuing sections.

§ 116 (83). **The subject or object of a statute.**—The subject of a statute is the matter of public or private concern in respect to which its provisions are enacted; its object is its general aim or purpose.³⁶ The constitutional clause under consideration, in some instances, is that no law shall embrace more than one *subject*; in others, no more than one *object*. These words are not strictly synonymous; but the provisions thus verbally varying have received substantially the same construction. The decisions made in New Jersey, Michigan and West Virginia are freely quoted in the other states; practically the same rule or principle of construction is acknowledged, and no distinctions have been established on the use of one of these words instead of the other, though allusion has sometimes been made to this difference of terms.³⁷ In Texas the earlier constitution used the word “object” and the later ones used “subject,” and it is held that that change of words did not change the essential meaning of the provision.³⁸ The particular object of a statute cannot be expressed without also expressing the subject of it. Thus in an act to divide the state into judicial districts, the subject and object are identical; that is, the answer would be the same respectively to questions

³⁵ *Montclair v. Ramsdell*, 107 U. S. 155, 2 S. C. Rep. 391, 27 L. Ed. 431.

³⁶ *Matter of Mayer*, 50 N. Y. 507; *Dorsey's Appeal*, 72 Pa. St. 192.

³⁷ *Shields v. Bennett*, 8 W. Va. 83; *State v. Cassidy*, 22 Minn. 325, 21 Am. Rep. 765; *Lien v. County Com'rs*, 80 Minn. 58, 82 N. W. 1094.

³⁸ *Adams v. San Angelo Water Works Co.*, 86 Tex. 485, 25 S. W.

605. In Louisiana, where the provision in question has the word “object,” it is said by the court: “The *object* of a law is the aim or purpose of the enactment.” “The *subject* of a law is the matter to which it relates and with which it deals.” *State v. Ferguson*, 104 La. 249, 28 So. 917, 81 Am. St. Rep. 123.

pointed by those words. There is, therefore, no impropriety in using them indifferently.

§ 117 (84). **Constitution does not restrict scope of subject embraced by act.**—There is no constitutional restriction as to the scope or magnitude of the single subject of a legislative act. One to establish the government of the state embraces but a single subject or object, yet it includes all its institutions, all its statutes.³⁹ The unity of such an act, covering the multiform concerns of a commonwealth, is the congruity of all the details as parts of one “stupendous whole,” of one government. That is the grand subject of such a statute or system of laws; it is equally the object of all its varied titles of chapters and sections.

There is similar unity in acts creating municipal corporations. Such a statute creates the corporate entity, invests it with and regulates the exercise of the necessary legislative, taxing, judicial and police powers. It embraces but one subject. The separate provisions granting, defining and regulating these powers are but parts of a whole, and essential to make a whole—the municipality.⁴⁰ One act may define all the crimes and provide a procedure in prosecutions. Each crime is distinct; the practice is distinct; but all the provisions of such an act are congruous parts of a larger subject which is an entirety.⁴¹ The California codes are good illustrations of comprehensive acts, each of which is a composite unity. One is entitled “An act to establish a political code.” The first section defines its scope and parts: “This act shall be known as the political code of the state of California, and is divided into five parts as follows:

³⁹ *Bowman v. Cockrill*, 6 Kan. 311. *Borough*, 192 Pa. St. 349, 43 Atl. 985. And see *post*, §§ 127, 128.

⁴⁰ *Harris v. People*, 59 N. Y. 599; *Montclair v. Ramsdell*, 107 U. S. 147, 2 S. C. Rep. 391, 27 L. Ed. 431; *Grover v. Trustees, etc.*, 45 N. J. L. 399; *Crookston v. County Com'rs*, 79 Minn. 283, 82 N. W. 536, 79 Am. St. Rep. 453; *In re Sugar Notch*

⁴¹ *State v. Brassfield*, 81 Mo. 151, 162, 51 Am. Rep. 234; *City Council v. Birdsong*, 126 Ala. 632, 28 So. 532; *Central of Georgia R. R. Co. v. State*, 104 Ga. 831, 81 S. E. 581, 42 L. R. A. 518.

Part 1. Of the sovereignty and people of the state, and of the political rights and duties of all persons subject to its jurisdiction. 2. Of the chief political divisions, seat of government, and legal distances of the state. 3. Of the government of the state. 4. Of the government of counties, cities and towns. 5. Of the definitions and sources of law; the common law; the publication and effect of the codes; and the express repeal of the statutes.” The constituents of this section are congruous as parts of a political system. But in less comprehensive legislation, the subject or object may admit of joining only the topics in one of these subdivisions. So in legislating still more in detail, the subject may be so circumscribed that even two topics in one subdivision would render the act multifarious.⁴² The constitution does not enumerate the integers of statutory law, and therefore the legislature may make such divisions as it thinks proper, if it confines each act to a single subject; nor is it any objection, under this clause of the constitution, that an act does not dispose of the whole subject to which it relates.⁴³

The supreme court of California, in a recent case, in discussing an act entitled “An act to revise the code of civil procedure of the state of California, by amending certain sections, repealing others, and adding certain new sections,” expressed itself as follows upon the subject of general titles: “We cannot agree with the contention of some of respondent’s counsel—apparently to some extent countenanced by a few authorities—that the provision of the constitution in question can be entirely avoided by the simple device of putting into the title of an act words which denote a subject ‘broad’ enough to cover everything. Under that view ‘An act concerning the laws of the state’ would be good, and the convention and people who framed and adopted the constitution would be convicted of the folly of elaborately constructing a grave constitutional limitation of legislative power upon a most important subject,

⁴² *Grover v. Trustees, etc.*, 45 N. J. L. 399. ⁴³ *Davis v. State*, 7 Md. 158.

which the legislature could at once circumvent by a mere verbal trick. The word 'subject' is used in the constitution in its ordinary sense; and when it says that an act shall embrace but 'one subject' it necessarily implies — what everybody knows — that there are numerous subjects of legislation, and that only one of these subjects shall be embraced in any one act. All subjects cannot be joined into one subject by the mere magic of a word in the title. . . . Nearly all of our general laws are arranged, for convenience, under four main headings, or names, to wit: the Civil Code, the Code of Civil Procedure, the Penal Code, and the Political Code, but no one of these codes is complete in itself; legislation under either code is inseparably interwoven with legislation under the others; and legislation upon any imaginable subject would not be held invalid because found in any particular code. . . . How, then, can it be rightly said that a mere reference in the title of an act to the Code of Civil Procedure — or to any other code — expresses any subject? If so, what subject? If the reference had been merely to 'civil procedure' — if it had been 'An act concerning civil procedure,' — it is doubtful if it would have been in accordance with the clear intent of the constitution as to one subject. There is no definition in our laws of 'procedure,' nor can any satisfactory definition of it be found in the general authorities. . . . But, as before stated, the title merely refers to one of our codes, and, considering the multifarious character of the codes, it expresses no subject whatever."⁴⁴

On the other hand the supreme court of Minnesota, in affirming the validity of an act entitled "An act to establish a probate code," which contained twenty-one chapters and three hundred and twenty-six sections, and embraced wills, descent of real and personal property, administration of estates of deceased persons, and all the various matters usually cognizable in probate courts, says: "Again, while

⁴⁴ *Lewis v. Dunne*, 134 Cal. 291, L. R. A. 833. And see *Trumble v. 66 Pac.* 478, 86 Am. St. Rep. 257, 55 *Trumble*, 37 Neb. 340, 55 N. W. 869.

this provision is mandatory, yet it is to be given a liberal and not a strict construction. It is not intended nor should it be so construed as to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, or by multiplying their number, or by preventing the legislature from embracing in one act all matters properly connected with one general subject. The term 'subject,' as used in the constitution, is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters having a logical or natural connection. . . . Any construction of this provision of the constitution that would interfere with the very commendable policy of incorporating the entire body of statutory law upon one general subject in a single act, instead of dividing it into a number of separate acts, would not only be contrary to its spirit, but also seriously embarrassing to honest legislation. All that is required is that the act should not include legislation so incongruous that it could not, by any fair intendment, be considered germane to one general subject. The subject may be as comprehensive as the legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject, and not several. The connection or relationship of several matters, such as will render them germane to one subject and to each other, can be of various kinds, as, for example, of means to ends, of different subdivisions of the same subject, or that all are designed for the same purpose, or that both are designated by the same term. Neither is it necessary that the connection or relationship should be logical; it is enough that the matters are connected with and related to a single subject in popular signification. The generality of the title to an act is no objection, provided only it is sufficient to give notice of the general subject of the proposed legislation and of the interests likely to be affected. The title was never intended to be an index of the law."⁴⁵

⁴⁵ Johnson v. Harrison, 47 Minn. 882. And see City Council v. Birdsong, 126 Ala. 632, 28 So. 532.

The following general titles were sustained in recent cases, the acts in each case being as comprehensive as the title would indicate: "An act to revise, amend and codify the statutes in relation to crimes and their punishment;"⁴⁶ "An act relative to crimes and punishments and proceedings in criminal cases;"⁴⁷ "An act to provide a system of revenue."⁴⁸

If a restrictive title is chosen the act must be kept within it.⁴⁹

§ 118 (85). **The provisions of an act must be germane to one subject.**— Whatever may be the scope of an act, it can embrace but one subject, and all its provisions must relate to that subject; they must be parts of it, incident to it or in some reasonable sense auxiliary to the object in view. That subject must be expressed in the title of the act. The constitutional requirement is addressed to the subject, not to the details of the act. The subject must be single; the provisions, to accomplish the object involved in that subject, may be multifarious.⁵⁰ It is a matter of some difficulty, in many instances, to determine precisely what is the subject of an act by reason of the contrariety of its provisions and the complexity of its machinery and aims. All acts are not methodically framed; they do not always declare directly the subject or ultimate end in the enacting part, and then define its constituents and adjuvants, so that the coherence and subordination of the parts, and their relation to a subject in which they converge, can be at once perceived. In the body of an act the subject in which the operation of all the details unite, or are intended to unite, is not unfrequently left to inference. If it can be made out by construction, is

⁴⁶ *Cook v. Marshall County*, 119 Iowa, 384, 93 N. W. 372.

⁴⁷ *State v. Tieman*, 35 Wash. 294. The legislature may make the title as comprehensive as it sees fit. *Marston v. Humes*, 8 Wash. 267, 28 Pac. 520.

⁴⁸ *Rosenbloom v. State*, 64 Neb. 342, 89 N. W. 1053.

⁴⁹ *Mitchell v. Colo. Milling & El. Co.*, 12 Colo. App. 277, 55 Pac. 736; *In re Breene*, 14 Colo. 401, 24 Pac. 8.

⁵⁰ *Block v. State*, 66 Ala. 498; *Ingles v. Strauss*, 91 Va. 209, 21 S. E. 490.

single, and embraces all the provisions of the act, it is enough so far as the purview is concerned.⁵¹ The statement of the subject in the title when correctly and comprehensively expressed will furnish a key to the intended unity of the enacting part. The whole act can be valid only when the subject so stated includes all the provisions in the body of the act.⁵² None of the provisions of a statute will be held unconstitutional when they all relate, directly or indirectly, to the same subject, have a natural connection, and are not foreign to the subject expressed in the title.⁵³ As very frequently expressed by the courts, any provisions that are *germane* to the subject expressed in the title may properly be included in the act.⁵⁴ "The constitutional provision is to

⁵¹ *State v. Tucker*, 46 Ind. 855; *State v. Young*, 47 Ind. 150; *Robinson v. Miner*, 68 Mich. 549, 37 N. W. 21.

⁵² *Montgomery M. B. & L. Ass'n v. Robinson*, 69 Ala. 413; *Ex parte Pollard*, 40 Ala. 99; *Grover v. Trustees, etc.*, 45 N. J. L. 399; *Shivers v. Newton*, 45 N. J. L. 469; *Ryerson v. Utley*, 16 Mich. 269; *State v. Bradt*, 103 Tenn. 584, 58 S. W. 942.

⁵³ *Howland Coal & Iron W. v. Brown*, 13 Bush, 685; *Phillips v. Bridge Co.*, 2 Met. (Ky.) 222; *Louisville, etc. Co. v. Ballard*, 2 Met. (Ky.) 168; *Chiles v. Drake*, 2 Met. (Ky.) 150, 74 Am. Dec. 406; *Johnson v. Higgins*, 3 Met. (Ky.) 566.

⁵⁴ *Barnhill v. Teague*, 96 Ala. 207, 11 So. 444; *Hawkins v. Roberts*, 123 Ala. 130, 27 So. 327; *Edwards v. Denver & R. G. R. Co.*, 13 Colo. 59, 21 Pac. 1011; *Catron v. County Com'rs*, 18 Colo. 553, 33 Pac. 513; *Jones v. Aspen Hardware Co.*, 21 Colo. 263, 40 Pac. 457, 52 Am. St. Rep. 220, 29 L. R. A. 143; *County Com'rs v. Jacksonville*, 36 Fla. 196, 18 So. 339; *Atlanta v. Gate City St.*

Ry. Co., 80 Ga. 276, 4 S. E. 269; *Newman v. State*, 101 Ga. 534, 28 S. E. 1005; *Hundall v. Hain*, 172 Ill. 76, 49 N. E. 985; *Rushville Gas Co. v. Rushville*, 121 Ind. 206, 23 N. E. 72, 16 Am. St. Rep. 388; *State v. Gerhardt*, 145 Ind. 439, 44 N. E. 469; *Gaines v. Williams*, 146 Ill. 450, 34 N. E. 934; *Pittsburgh, Cinn., Chicago & St. L. Ry. Co. v. Montgomery*, 152 Ind. 1, 49 N. E. 582, 71 Am. St. Rep. 301; *Rogers v. Jacob*, 88 Ky. 502, 11 S. W. 513; *Raubold v. Commonwealth*, 21 Ky. L. R. 1125, 54 S. W. 17; *County Com'rs v. Hellen*, 72 Md. 603, 20 Atl. 130; *Fort St. Union Depot Co. v. Morton*, 83 Mich. 265, 47 N. W. 228; *Sligh v. Grand Rapids*, 84 Mich. 497, 47 N. W. 1093; *Ripley v. Evans*, 87 Mich. 217, 49 N. W. 504; *McPherson v. Blacker*, 92 Mich. 377, 52 N. W. 469, 31 Am. St. Rep. 587, 16 L. R. A. 475; *People v. Huntley*, 112 Mich. 569, 71 N. W. 178; *McMorran v. Ladies of the Maccabees*, 117 Mich. 393, 75 N. W. 943; *Crawford v. Ross*, 126 Mich. 634, 86 N. W. 132; *State v. Board of Com'rs*, 67 Minn. 352, 69

have a practical and liberal construction, for it is manifest that a law may embrace but one subject, and yet include many provisions and details which would be inconvenient and unnecessary to refer to in the title. It is sufficient if the title fairly and reasonably expresses the subject, or is sufficiently broad and comprehensive to include the several provisions relating to, or connected with, the subject. And whatever provisions of the law are germane to the title of the act are proper to be incorporated into the body thereof.”⁵⁵

§ 119 (86). Requirement as to form or manner of expressing subject in title.—The direction is, generally, that the subject be “expressed in the title.” It is varied in some instances. In Nevada it is to be *briefly* expressed; in several it is to be *clearly* expressed. These qualifying words do not add any new element; they merely assist in the interpretation. A brief statement of the subject will suffice under the provision as it is generally worded;⁵⁶ and the decisions in Nevada afford no ground for inferring that a prolix title,

N. W. 1033; *State v. County Com'rs*, 88 Minn. 65, 85 N. W. 880; *State v. Mead*, 71 Mo. 266; *State v. Burgdoerfer*, 107 Mo. 1, 17 S. W. 646; *State v. Bronson*, 115 Mo. 271, 21 S. W. 1125; *State v. Slover*, 184 Mo. 10, 31 S. W. 1054, 34 S. W. 1102; *De Both v. Rich Hill Coal & Min. Co.*, 141 Mo. 497, 42 S. W. 1081; *State v. Beck*, 25 Nev. 68, 56 Pac. 1008; *Northern Counties Trust v. Sears*, 30 Ore. 388, 41 Pac. 931, 35 L. R. A. 188; *Nottage v. Portland*, 35 Ore. 539, 58 Pac. 883, 76 Am. St. Rep. 513; *Commonwealth v. Depuy*, 148 Pa. St. 201, 23 Atl. 896; *Hays v. Cumberland County*, 186 Pa. St. 109, 40 Atl. 282; *Goebeler v. Wilhelm*, 17 Pa. Supr. 432; *Frazier v. Railway Co.*, 88 Tenn. 138, 12 S. W. 587; *State v. Yardley*, 95 Tenn. 546,

32 S. W. 481, 84 L. R. A. 656; *Railroad Co. v. Crider*, 91 Tenn. 489, 19 S. W. 618; *Ryan v. Terminal Co.*, 102 Tenn. 111, 50 S. W. 744, 45 L. R. A. 303; *State v. Brown*, 103 Tenn. 449, 53 S. W. 727; *Peterson v. State*, 104 Tenn. 127, 56 S. W. 834; *Clark v. Findley*, 93 Tex. 171, 54 S. W. 1343; *Ingles v. Strauss*, 91 Va. 207, 21 S. E. 490; *Trehy v. Marye*, 100 Va. 40, 40 S. E. 126; *Detroit v. Detroit Citizens' St. Ry. Co.*, 184 U. S. 368, 22 S. C. Rep. 410, 46 L. Ed. 592; *Travelers' Ins. Co. v. Oswego*, 59 Fed. 53, 7 C. C. A. 609, 19 U. S. App. 321; *Tabor v. Commercial Nat. Bank*, 62 Fed. Rep. 383, 10 C. C. A. 429, 27 U. S. App. 111.

⁵⁵ *Putnam v. St. Paul*, 75 Minn. 514, 78 N. W. 90.

⁵⁶ *Shivers v. Newton*, 45 N. J. L. 469.

otherwise unobjectionable, would vitiate an act.⁵⁷ The requirement that it be *clearly* expressed imports no more than that it be expressed; though it may add some emphasis.⁵⁸ If the title does not clearly express the subject, but is ambiguous and suggestive of doubt, still it is believed the doubt, if possible, would be resolved in favor of the validity of the act.⁵⁹ The title of an act was formerly no part of it, and was not much resorted to in the exposition of the act; but under this constitutional clause it is an indispensable part of every act.⁶⁰

§ 120 (87). **The subject in an act can be no broader than the statement of it in the title.**—It is required not only that an act shall contain but one subject, but that that subject be expressed in the title. The title, thus made a part of each act, must agree with it by expressing its subject; the title will fix bounds to the purview, for it cannot exceed the title-subject, nor be contrary to it.⁶¹ An act will not be so construed as to extend its operation beyond the purpose expressed in the title.⁶² It is not enough that the act em-

⁵⁷ *State v. Ah Sam*, 15 Nev. 27.

⁵⁸ *Dorsey's Appeal*, 72 Pa. St. 192; *Commonwealth v. Martin*, 107 Pa. St. 185; *W. Phila. R. R. Co. v. Union R. R. Co.*, 9 Phila. 495; *Carr v. Thomas*, 18 Fla. 736; *Evans v. Memphis, etc. R. R. Co.*, 56 Ala. 246, 28 Am. Rep. 771; *Board of Com'rs v. Baker*, 80 Ind. 374; *Township of Union v. Rader*, 39 N. J. L. 509.

⁵⁹ *Montclair v. Ramsdell*, 107 U. S. 147, 2 S. C. Rep. 391, 27 L. Ed. 431; *State v. Board, etc.*, 26 Ind. 522; *People v. Briggs*, 50 N. Y. 553.

⁶⁰ *McGrath v. State*, 46 Md. 633; *State v. Town of Union*, 33 N. J. L. 350; *Indiana Central Ry. Co. v. Potts*, 7 Ind. 681; *Yeager v. Weaver*, 64 Pa. St. 427; *Stein v. Leeper*, 78 Ala. 517.

⁶¹ *Board of Com'rs v. Baker*, 80

Ind. 374; *Matter of Tappen*, 36 How. Pr. 390; *State v. Garrett*, 29 La. Ann. 637; *Coutieri v. Mayor, etc.*, 44 N. J. L. 58; *Mississippi, etc. Boom Co. v. Prince*, 10 Am. & Eng. Cor. Cas. 891, 34 Minn. 71; *Ex parte Moore*, 62 Ala. 471; *Matter of Blodgett*, 89 N. Y. 392; *Crabb v. State*, 88 Ga. 584, 15 S. E. 455; *Land Title Warranty & Safe Dep. Co. v. Tanner*, 99 Ga. 470, 27 S. E. 727; *Harris v. State*, 110 Ga. 887, 36 S. E. 232; *Dixon v. Poe*, 159 Ind. 492, 65 N. E. 518; *State v. Pierson*, 41 La. Ann. 90, 10 So. 400; *Jones v. Morristown*, 66 N. J. L. 488, 49 Atl. 440; *Lacey v. Palmer*, 93 Va. 159, 24 S. E. 930. 57 Am. St. Rep. 795.

⁶² *Bates v. Nelson*, 49 Mich. 450, 13 N. W. 817; *Elliott v. State*, 91 Ga. 694, 17 S. E. 1004; *Allen v. Ber-*

braces but a single subject or object, and that all its parts are germane; the title must express that subject, and comprehensively enough to include all the provisions in the body of the act.⁶³ The unity and compass of the subject must, therefore, always be considered with reference to both title and purview. The unity must be sought, too, in the ultimate end which the act proposes to accomplish, rather than in the details leading to that end.⁶⁴ The particular effect of the purview exceeding the title, or of the latter misrepresenting the purview, will be discussed in another section.⁶⁵ The title cannot be enlarged by construction when too narrow to cover all the provisions in the enacting part, nor can the purview be contracted by construction to fit the title;⁶⁶ but the title, if not delusively general, may be sufficient though more extensive than the purview.⁶⁷

§ 121 (88). **Requisites of title generally**—It need not index the details of the act.—The title must state the subject of the act for the purpose of information to members of the legislature and public while the bill is going through the forms of enactment.⁶⁸ It is not required that

nards Tp., 57 N. J. L. 303, 31 Atl. 219.

⁶³ *Mewherter v. Price*, 11 Ind. 201; *Ryerson v. Utley*, 16 Mich. 269; *Dorsey's Appeal*, 72 Pa. St. 192; *Ross v. Davis*, 97 Ind. 79; *Knoxville v. Lewis*, 12 Lea. 180; *Stiefel v. Md. Inst. for Blind*, 61 Md. 144; *Town of Fishkill v. Fishkill, etc. P. R. Co.*, 23 Barb. 634; *Grover v. Trustees, etc.*, 45 N. J. L. 399; *Shivers v. Newton*, 45 N. J. L. 469; *Cooley's Const. L.* 179; *Greaton v. Griffin*, 4 Abb. Pr. (N. S.) 310.

⁶⁴ *State v. Town of Union*, 33 N. J. L. 350; *State v. County Judge*, 2 Iowa, 280; *City of St. Louis v. Tiefert*, 42 Mo. 578; *Morford v. Unger*, 8 Iowa, 82; *Whiting v. Mt. Pleasant*, 11 Iowa, 482; *Clinton v. Dra-*

per, 14 Ind. 295; *Supervisors v. People*, 25 Ill. 181; *Succession of Lanzetti*, 9 La. Ann. 329; *post*, §§ 121, 122.

⁶⁵ See *post*, § 143 et seq.

⁶⁶ *Howland Coal & Iron Works v. Brown*, 13 Bush, 681; *In re Paul*, 94 N. Y. 497; *Matter of Sackett, etc. Sts.*, 74 N. Y. 95; *State v. Clinton*, 27 La. Ann. 40; *post*, § 127.

⁶⁷ *Yeager v. Weaver*, 64 Pa. St. 427; *In re De Vaucene*, 31 How. Pr. 337; *Luther v. Saylor*, 8 Mo. App. 424; *Johnson v. People*, 83 Ill. 431; *Coutieri v. New Brunswick*, 44 N. J. L. 58; *Garvin v. State*, 13 Lea, 162; *post*, § 123 et seq.

⁶⁸ *Grover v. Trustees, etc.*, 45 N. J. L. 399; *McGrath v. State*, 46 Md. 633; *People v. Lawrence*, 36 Barb. 185; *Dorsey's Appeal*, 72 Pa. St.

the title should be exact and precise.⁶⁹ It is sufficient if the language used in the title, on a fair construction, indicates the purpose of the legislature to legislate according to the constitutional provision; so that making every reasonable intendment in favor of the act, it may be said that the subject or object of the law is expressed in the title.⁷⁰ As said by the supreme court of Illinois, the constitution does not require that "the subject of the bill shall be specifically and exactly expressed in the title; hence we conclude that any expression in the title which calls attention to the subject of the bill, although in general terms, is all that is required."⁷¹ It may be general,⁷² but must be specific enough to answer reasonably the purpose for which the subject is required to be expressed in the title.⁷³

192; *Indiana Cent. Ry. Co. v. Potts*, 7 Ind. 681; *Shields v. Bennett*, 8 W. Va. 83; *People v. McCallum*, 1 Neb. 182; *State v. County Judge*, 2 Iowa, 282; *Sun Mut. Ins. Co. v. Mayor, etc.*, 8 N. Y. 252; *Mississippi, etc. Boom Co. v. Prince*, 10 Am. & Eng. Cor. Cas. 892, 34 Minn. 71; *Harris v. People*, 59 N. Y. 602; *Parkinson v. State*, 14 Md. 184, 74 Am. Dec. 522; *Ryerson v. Utley*, 16 Mich. 269; *Brewster v. Syracuse*, 19 N. Y. 116; *National Bank v. Southern, etc. Co.*, 55 Ga. 36; *Town of Fishkill v. Fishkill, etc. P. R. Co.*, 22 Barb. 634; *Hargrave v. Weber*, 66 Mich. 59; *Wolf v. Taylor*, 98 Ala. 254, 13 So. 688; *Mobile Trans. Co. v. Mobile*, 128 Ala. 335, 30 So. 645, 86 Am. St. Rep. 143; *Ex parte Liddell*, 93 Cal. 633, 29 Pac. 251; *State v. Tibbet*, 52 Neb. 228, 71 N. W. 990, 66 Am. St. Rep. 492.

⁶⁹ *Grover v. Trustees, etc.*, 45 N. J. L. 399; *Daubman v. Smith*, 47 N. J. L. 200; *In re Mayer*, 50 N. Y. 506; *People v. Briggs*, 50 N. Y. 558; *Louisiana State Lottery Co. v.*

Richoux, 23 La. Ann. 745; *Johnson v. People*, 83 Ill. 431.

⁷⁰ *Grover v. Trustees, etc.*, 45 N. J. L. 399; *State Line, etc. R. R. Co.'s Appeal*, 77 Pa. St. 429; *Atkinson v. Duffy*, 16 Minn. 49.

⁷¹ *Johnson v. People*, 83 Ill. 436; *Ritchie v. People*, 155 Ill. 98, 120, 40 N. E. 454, 462, 46 Am. St. Rep. 315, 29 L. R. A. 79.

⁷² *State v. Rogers*, 107 Ala. 444, 19 So. 909; *Catron v. County Com'rs*, 18 Colo. 553, 33 Pac. 513; *Donnersberger v. Prendergast*, 128 Ill. 229, 21 N. E. 1; *Rex Lumber Co. v. Reed*, 107 Iowa, 111, 77 N. W. 572; *McKeon v. Sumner Bldg. & Supply Co.*, 51 La. Ann. 1961, 26 So. 430; *State v. Am. Sugar Ref. Co.*, 106 La. 553, 31 So. 181; *Crookston v. County Com'rs*, 79 Minn. 283, 82 N. W. 586, 79 Am. St. Rep. 453; *State v. Anaconda Copper Min. Co.*, 23 Mont. 498, 59 Pac. 854; *Newark v. Orange*, 55 N. J. L. 514, 26 Atl. 799; *Powell v. Supervisors*, 88 Va. 707, 14 S. E. 543.

⁷³ *Shivers v. Newton*, 45 N. J. L. 469; *State v. Garrett*, 29 La. Ann.

When the subject is stated in the title the constitution is so far complied with that no criticism of the mode of statement will affect the validity of the act.⁷⁴ The statute is valid in such a case; the degree of particularity in expressing the subject in the title is left to the discretion of the legislature.⁷⁵ No particular form has been prescribed in the constitution for expressing the subject or purpose of a statute in its title.⁷⁶ It need not index the details of the act, nor give a synopsis of the means by which the object of the statute is to be effectuated by the provisions in the body of the act.⁷⁷

637; *Montclair v. Ramsdell*, 107 U. S. 147, 2 S. C. Rep. 391, 27 L. Ed. 431; *Matter of Sackett, etc. Sts.*, 74 N. Y. 95; *Shields v. Bennett*, 8 W. Va. 83; *Green v. Mayor, etc., R. M. Charlt.* 368; *Mayor, etc. v. State*, 4 Ga. 26; *City of Eureka v. Davis*, 21 Kan. 580; *Grover v. Trustees, etc.*, 45 N. J. L. 399; *People v. McCallum*, 1 Neb. 183; *Montgomery, etc. Ass'n v. Robinson*, 69 Ala. 413; *American Printing House v. Dupuy*, 37 La. Ann. 188; *State v. Wilson*, 12 Lea, 246; *State v. McConnell*, 8 Lea, 332; *State v. Whitworth*, 8 Lea, 594; *Commonwealth v. Green*, 58 Pa. St. 226; *Luehrman v. Taxing Dist.*, 2 Lea, 425; *Clinton Water Com'rs v. Dwight*, 101 N. Y. 9, 3 N. E. 782; *In re Knaust*, 101 N. Y. 188, 4 N. E. 338; *Greaton v. Griffin*, 4 Abb. Pr. (N. S.) 310; *Daubman v. Smith*, 47 N. J. L. 200; *State v. Elvins*, 32 N. J. L. 362; *Parkinson v. State*, 14 Md. 184; *Falconer v. Robinson*, 46 Ala. 340.

⁷⁴ *State v. Winter*, 118 Ala. 1, 24 So. 89. The court says: "It is not within the province of courts to sit in judgment upon the title, and determine whether it could not

have been drawn in some other form, more clearly or definitely indicating the subject to which the body of the act relates. The legislature is not subject to judicial control in respect to the form or mode in which the subject of a law shall be expressed in the title. If the subject be expressed, the mandate and all the purposes of the constitution are satisfied." pp. 35, 36.

⁷⁵ *In re Mayer*, 50 N. Y. 504; *Sun Mut. Ins. Co. v. Mayor, etc.*, 8 N. Y. 241; *State v. Town of Union*, 33 N. J. L. 350; *State v. Newark*, 34 N. J. L. 236; *Montgomery, etc. Ass'n v. Robinson*, 69 Ala. 413; *Ryerson v. Utley*, 16 Mich. 269; *People v. Mahaney*, 13 Mich. 494; *Morford v. Unger*, 8 Iowa, 82; *Whiting v. Mt. Pleasant*, 11 Iowa, 482; *Indiana Cent. R. R. Co. v. Potts*, 7 Ind. 681; *State v. Bowers*, 14 Ind. 195; *State v. County Judge*, 2 Iowa, 280; *Brewster v. Syracuse*, 19 N. Y. 116.

⁷⁶ *Grover v. Trustees, etc.*, 45 N. J. L. 399; *People v. McCallum*, 1 Neb. 182.

⁷⁷ *People v. McCallum, supra*;

The supreme court of Indiana says: "To express the subject of a statute in the title, in compliance with the requirement of the constitution, no particular form or terms are exacted, nor is it essential that such subject be expressed with precision. The title will sufficiently conform to the command of the constitution if it be so framed and worded as fairly to apprise the legislators, and the public in general, of the subject-matter of the legislation, so as reasonably to lead to an inquiry into the body of the bill. The constitutional requirement may be interpreted to mean that the act and its title must correspond, not literally but substantially, and such correspondence is to be determined in view of the subject-matter to which the legislation relates."⁷⁸

Stuart v. Kinsella, 14 Minn. 525; St. Paul v. Colter, 12 Minn. 50, 90 Am. Dec. 278; State v. Daniel, 28 La. Ann. 38; McCaslin v. State, 44 Ind. 151; Collins v. Henderson, 11 Bush, 74; Sun Mut. Ins. Co. v. Mayor, etc., 8 N. Y. 241; Conner v. Mayor, etc., 5 N. Y. 285; People v. Lawrence, 41 N. Y. 137; Daubman v. Smith, 47 N. J. L. 200; Luehrman v. Taxing Dist., 2 Lea, 425; Township of Union v. Rader, 39 N. J. L. 507; Brown v. State, 78 Ga. 38; Reed v. State, 12 Ind. 641; State v. Lasater, 9 Baxt. 584; State v. Miller, 45 Mo. 495; Hammond v. Lesseps, 31 La. Ann. 337; Peachee v. State, 63 Ind. 399; Howell v. State, 71 Ga. 224; Luther v. Saylor, 8 Mo. App. 424; Martin v. Broach, 6 Ga. 21, 50 Am. Dec. 306; People v. Brislin, 80 Ill. 423; Bright v. McCulloch, 27 Ind. 223; State v. Cassidy, 22 Minn. 325, 21 Am. Rep. 765; State v. County Com'rs, 13 Am. & Eng. Cor. Cas. 203, 17 Nev. 96; Goldsmith v. Rome R. R.

Co., 62 Ga. 473; State v. Silver, 9 Nev. 227; Gabbert v. Jefferson R. Co., 11 Ind. 365, 71 Am. Dec. 358; State v. Winter, 118 Ala. 1, 24 So. 89; McGruder v. State, 83 Ga. 616, 10 S. E. 441; Hronek v. People, 134 Ill. 139, 24 N. E. 861, 8 L. R. A. 837; Parks v. State, 159 Ind. 211, 64 N. E. 862; Wilson v. Herink, 64 Kan. 607, 68 Pac. 72; State v. Madson, 43 Minn. 438, 45 N. W. 856; Philadelphia v. Ridge Ave. Ry. Co., 142 Pa. St. 484, 21 Atl. 982, 24 Am. St. Rep. 512; State v. Morgan, 2 S. D. 32, 48 N. W. 314; Memphis v. Am. Express Co., 102 Tenn. 336, 52 S. W. 172; Commonwealth v. Brown, 91 Va. 762, 21 S. E. 357; Lancy v. King Co., 15 Wash. 9, 45 Pac. 645, 34 L. R. A. 817; State v. Whittlesey, 17 Wash. 447, 50 Pac. 119.

⁷⁸ Maule Coal Co. v. Parthenheimer, 155 Ind. 100, 106, 55 N. E. 751. And see Wrought Iron Bridge Co. v. Attica, 119 N. Y. 204, 23 N. E. 542.

§ 122 (89). Effect of “etc.,” “and so forth,” “and for other purposes” in title.— It has been decided in Tennessee that “etc.” added to a title has force in extending the enumeration which precedes it.⁷⁹ The question arose as to the validity of provisions in an act having this title: “An act to punish as felons all parties who may engage in keeping or conducting halls or houses for conduct of games of keno, faro, three-card monte and mustang, etc.” Turney, J., delivering the opinion of the court, said: “The ‘etc.’ used at the end and as part of the title may not be rejected; it has a meaning. Webster defines it, ‘et cetera,’ ‘and others,’ ‘and so forth.’ This definition applied here makes it import ‘and the rest of the games,’ or ‘other games.’ It gives the members of the legislature notice that the subject of the title is drawn or elaborated in the body of the act; that the reformatory force of the act is not to be confined to houses, or to persons keeping houses for playing the four games recited, but is extended to other games. It has a significant and pointed conclusion which could not escape the attention of any member of the legislature who has regard to his obligations and duties. It said to him in terms, other games are leveled at besides the four mentioned in the title, and you are invited to look at them. It admonished him, the act is not made to cover a legislation incongruous in itself. By fair intendment, the bill had a necessary and proper connection with the act. . . . It cannot be objected that the title upon the subject is broader than the act under it. The title notified the legislature of a thoroughly comprehensive thrust at all parties engaged in conducting gambling houses; the act confines the thrust to parties conducting houses in the playing of nine games. The record shows there are a great many other games which are played everywhere, besides these mentioned in the act, of which, however, we presume the draftsman of the act was uninformed, but which might have been embraced under the title to his act. . . . It is now insisted the abbreviation ‘etc.’ has no meaning at all, or, at most, means

⁷⁹ Garvin v. State, 13 Lea, 162.

‘and for other purposes.’ . . . The abbreviation may no longer be called such. It is thoroughly incorporated into our language, is defined by our lexicographers, and is a perfect English word in almost common use.

“It cannot mean ‘and for other purposes,’ for the reason that such definitions would include any and all purposes, however foreign to the object of the legislation, one of the inconveniences and inconsistencies intended to be remedied by the present constitution.”⁸⁰ In Virginia the words “and so forth” were held not to extend the scope of the title. The act in question was entitled: “An act to prevent pool selling, and so forth, upon the results of any trials of speed of any animals or beasts taking place without the limits of the commonwealth.” The act made unlawful almost every conceivable form of making bets or wagers upon such trials of speed. It was held that as to all except pool-selling the act was invalid, because not embraced in the title.⁸¹

The phrase, “and for other purposes,” expresses no specific purpose, and imports indefinitely something different from that which precedes it in the title. It is therefore universally rejected as having no force or effect, wherever this constitutional restriction operates.⁸²

⁸⁰ To the same effect: *Commonwealth v. Clark*, 8 Pa. Supr. Ct. 141. In this case the title was, “An act to protect fruit, gardens, growing crops, grass, *et cetera*, and punish trespass.” The court said: “The words ‘*et cetera*’ in the title under consideration refer to things generically the same as those particularly specified, and therefore embrace trees, plants, flowers and the like.”

⁸¹ *Lacey v. Palmer*, 93 Va. 159, 24 S. E. 930, 57 Am. St. Rep. 795.

⁸² *City of St. Louis v. Tiefel*, 42 Mo. 578; *State v. Garrett*, 29 La. Ann. 637; *Commonwealth v. Green*,

58 Pa. St. 233; *Spier v. Baker*, 120 Cal. 870, 52 Pac. 659, 41 L. R. A. 196; *County Com’rs v. Aspen Min. & C. Co.*, 3 Colo. App. 223, 32 Pac. 717. The early constitution of Georgia forbade the passage of a law containing matter different from that expressed in the title. Under this provision it was held that the words “and for other purposes,” “would authorize legislation upon any subject with which the legislature could constitutionally deal.” *Martin v. Broach*, 6 Ga. 21, 50 Am. Dec. 306, and cases cited *ante*, § 110. “Since 1861 these words will not authorize legislation upon any sub-

§ 123 (90). Title misleading by reason of generality.—

A title so general as practically to conceal the subject of the statute, or a false or delusive title, will be treated as not constitutionally framed, and the act held void.⁸³ An act "to legalize and authorize the assessment of street improvements and assessments" was held void for undue generality in not mentioning the place where it was intended to operate. It was a local act, and yet it did not name the city to which it applied.⁸⁴ So an act "to regulate a road in the town of Palatine, Montgomery county," was held to conceal its true subject and to be false and delusive.⁸⁵ The following acts, as entitled, received the same construction: An act to fix the salaries of the officers of a particular city, and confined to that city in its provisions, but entitled "An act to fix and regulate the salaries of city officers in cities of this state;"⁸⁶ an act legalizing by its provisions a lottery scheme for a private partnership, under the title of "An act to establish the Mobile Charitable Association for the benefit of the common school fund of Mobile county, without distinction of color;"⁸⁷ a supplement to a railroad charter providing for extension of its track into a new territory under a clause in the title "to lay additional tracks."⁸⁸

ject save one which is germane to the subject embraced in the title." *Macon v. Hughes*, 110 Ga. 795, 36 S. E. 247; *Blair v. State*, 90 Ga. 326, 17 S. E. 96, 35 Am. St. Rep. 206; *Butner v. Boifeuillet*, 100 Ga. 743, 28 S. E. 464; *Hart v. State*, 118 Ga. 939, 39 S. E. 321. Practically, therefore, such words do not extend the scope of the title under the later constitutions. See also *Sasser v. State*, 99 Ga. 54, 25 S. E. 619; *Burns v. State*, 104 Ga. 544, 30 S. E. 815.

⁸³ *People v. Allen*, 42 N. Y. 404.

⁸⁴ *Durkee v. City of Janesville*, 26 Wis. 697. In *Neuendorff v. Duryea*, 69 N. Y. 557, 25 Am. Rep. 235, an act by its provisions local to New

York city was general in its title: "An act to preserve the public peace and order on the first day of the week, commonly called Sunday." It was held sufficient to cover provisions prohibiting dramatic performances on that day, since the cessation of such entertainments was one of the particulars going to make up the public peace and good order.

⁸⁵ *People v. Com'rs of Highways*, 53 Barb. 70.

⁸⁶ *Coutieri v. New Brunswick*, 44 N. J. L. 58.

⁸⁷ *Moses v. Mayor, etc.*, 52 Ala. 198.

⁸⁸ *Union Passenger Ry. Co.'s Appeal*, 81* Pa. St. 91; *West Phila. R.*

An act entitled "An act to protect the planting and cultivating of oysters in the tidewaters of this state," which excluded certain waters from its operation, was held void, because the title indicated an intent to legislate as to all tidewaters, and hence was misleading.⁸⁹ So "An act relating to the cost of improving sidewalks in the cities of this state," which, in the body of the act, was made to apply only to cities of the third class, was held void for a similar reason. In giving their decision in this case the court of errors and appeals of New Jersey say: "The title states that the object is to legislate for the cities of the state as a class. The act excludes from its operation all of these cities except those of the third class. No one, on reading the title, could reasonably understand that the body of the act was to have so limited an effect."⁹⁰

Upon like grounds the following acts were held invalid: "An act to authorize the city of Milwaukee to change the grade of streets," which applied only to a limited district of forty-nine blocks;⁹¹ "An act making it a misdemeanor to issue trading stamps and other devices," which, while purporting to apply to all classes, exempted certain classes from its operation.⁹²

These decisions have been referred to in detail because no general rule on the subject can safely be formulated. This will be manifest when the cases cited in this section are compared with those cited in the following section.

§ 124. The title may be broader and more comprehensive than the act.—An act of Missouri entitled "An act to establish and maintain a uniform course of text books to be used in all the public schools within this state, and to reduce the price thereof," excluded from its opera-

R. Co. v. Union R. R. Co., 9 Phila. 495.

⁸⁹ State v. Steelman, 66 N. J. L. 518, 49 Atl. 978.

⁹⁰ Beverly v. Waln, 57 N. J. L. 143, 144, 30 Atl. 545.

⁹¹ Anderton v. Milwaukee, 82 Wis. 279, 52 N. W. 95, 15 L. R. A. 830.

⁹² State v. Walker, 105 La. 492, 29 So. 973. See also Allardt v. People, 197 Ill. 501, 64 N. E. 533.

tion cities and districts having over one hundred thousand population. The act was held valid and the court *in banc* says: "The constitution does not say that the title shall be as narrow as the act. What it says on this point is, that the single subject shall be clearly expressed in the title. The fact, therefore, that the title is broader than the act can be no objection, unless the title is comprehensive enough to admit of disconnected and incongruous subjects."⁹³ In this case the act in question expressly purported by its title to apply to all the public schools within the state and yet excepted a very important class. Like rulings were made upon the following titles and acts: An act purporting by its title to relate to the fees of county officers generally, but limited in the purview to counties of over fifty thousand inhabitants;⁹⁴ an act entitled: "An act extending the time in which distraint and sale may be made for taxes," and limited in its operation to certain counties and to the taxes for certain years;⁹⁵ "An act to encourage and provide for a *general* vaccination in the state of California," which applied only to school children;⁹⁶ an act to protect the health of domestic animals, which related to dairy cows and neat cattle only;⁹⁷ "An act to prevent the fraudulent transfer of personal property," which applied only to mortgagors of personal property. "The mere fact," says the court, "that the legislature chose a title much more compre-

⁹³ State v. Bronson, 115 Mo. 271, 21 S. W. 1125.

⁹⁴ State v. Frazier, 86 Ore. 178, 39 Pac. 5.

⁹⁵ McEldowney v. Wyatt, 44 W. Va. 711, 30 S. E. 239, 45 L. R. A. 609.

⁹⁶ Abeel v. Clark, 84 Cal. 226, 24 Pac. 383. The court says: "It is true that the term 'vaccination,' in the title, is qualified by the adjective 'general,' which makes it broad enough to include all the people of the state; while the body of the act relates to only a certain

general class in the state, viz., scholars of the public schools and those who desire to become such. But we think, under the rules of construction above stated, that the term 'general,' in the title, applies to that general class specified in the act; and that neither the legislature nor the public could be misled by the manner in which the subject of the act is expressed in the title." p. 229.

⁹⁷ Commonwealth v. Cooper, 12 Pa. Dist. Ct. 199.

hensive than the matter covered by the body of the act cannot be objectionable.”⁸⁸ The supreme court of Alabama says: “The object of this provision of the constitution was to prevent surprise and fraud in passing laws under misleading titles. It should not, therefore, be construed so as to defeat, by too technical an application, legislation not clearly within the evil aimed at. If the title of an act is single and directs the mind to the subject of the law in a way calculated to direct the attention truly to the matter which is proposed to be legislated upon, the object of the provision is satisfied. In such case the generality of a title, not defining the particulars of the proposed legislation, would be more apt to excite general attention than otherwise, since the general words would give warning that everything within their limits might be affected and thus draw the attention of the whole body of legislators, while narrower words would only interest those concerned with the matters specially named.”⁸⁹

Many cases hold that the title may be broader than the act, that an act need not cover all the ground that might be covered under its title, and need not legislate respecting all the classes, persons, objects or things embraced or comprehended by the title.¹ “An act to prohibit book-making

⁸⁸ *State v. Heldenbrand*, 62 Neb. 136, 142, 87 N. W. 25, 89 Am. St. Rep. 743.

⁸⁹ *Mobile Transportation Co. v. Mobile*, 128 Ala. 335, 347, 30 So. 645, 86 Am. St. Rep. 143.

¹ *Mollie Gibson Consol. Min. & Mil. Co. v. Sharp*, 23 Colo. 259, 47 Pac. 266; *Johnson v. People*, 83 Ill. 431; *Ash v. Thorp*, 65 Kan. 60, 68 Pac. 1067; *Davis v. State*, 7 Md. 158; *Baltimore v. Keeley Inst.*, 81 Md. 106, 31 Atl. 437, 27 L. R. A. 646; *Luther v. Saylor*, 8 Mo. App. 424; *State v. Anaconda Copper Min. Co.*, 23 Mont. 498, 59 Pac. 854; *Coutieri v. New Brunswick*, 44 N. J. L. 58;

Johnson v. Asbury Park, 60 N. J. L. 427, 39 Atl. 693; *In re De Vaucene*, 81 How. Pr. 337; *Yeager v. Weaver*, 64 Pa. St. 427; *State v. Becker*, 3 S. D. 29, 51 N. W. 1018; *Garvin v. State*, 13 Lea, 162; *State v. Schlitz Brewing Co.*, 104 Tenn. 715, 59 S. W. 1033, 78 Am. St. Rep. 941; *Howlett v. Cheetham*, 17 Wash. 626, 50 Pac. 522. “We are aware of no adjudicated case, and it is believed that none can be found, that holds an act of the legislature obnoxious to this section of the constitution simply on the ground that the provisions of the act do not embrace or cover the

and pool-selling" prohibited book-making and pool-selling on certain events to take place outside of the state and on political nominations and elections wherever held. The act was held valid and, on the point in question, the court says: "But the act before the court is prohibitory in its entire scope and purpose. It does not prohibit *all* book-making and pool-selling on the events named, but as far as it attempts to deal with the subject it prohibits them. The act is not, it is true, as broad as its title, but it is germane to and included in it. Logically, some prohibition is included in all prohibition. Logically, the title does contain the subject of the act. The title does not give notice how the prohibition is to be effected, or to what extent, whether partially or wholly, whether by making the act prohibited a felony, or a misdemeanor; but it does give the information that the act is for the *prohibition* of book-making and pool-selling."² Also that "the title of an act may contain a *generic* term, and the body of the enactment be specific, and the act be upheld, provided the enactment is germane to and included in the subject of the title."

§ 125. **Misleading titles.**—The case of *Anderson v. Hill*³ involves an act with a misleading title. The title of the act is "to provide for the straightening or otherwise deepening the channel of the Dowagiac river in Van Buren county." There were three sections in the act. They authorized either or both of the two named townships in Van Buren county to vote money to be raised by tax, and the expenditure of it "for such river improvements." It was held unconstitutional in part on the ground that "the ob-

full scope of appropriate legislation admissible under its title." *Powers v. McKenzie*, 90 Tenn. 167, 178, 16 S. W. 559. And the supreme court of Michigan says that "we do not understand the body of the act must contain all the provisions it might contain under the title to

save the act from being unconstitutional." *Boyer v. Grand Rapids Fire Ins. Co.*, 124 Mich. 455, 83 N. W. 124, 83 Am. St. Rep. 338.

²*State v. Burgdoerfer*, 107 Mo. 1, 27, 28, 17 S. W. 646.

³54 Mich. 477.

ject " was not sufficiently stated in the title. The court say: "The state having the right to engage in and carry on works of internal improvement by the expenditure of grants to the state of lands, the obvious inference from the language of the title would be that the state proposed to provide for the straightening or deepening of the channel of the Dowagiac river by doing what they constitutionally could do, namely, by appropriating land for that purpose. This is the method she has provided for making her internal improvements since 1850. In view of the constitutional restriction, and the long course of practice pursued by the state in making internal improvements, would any one be justified in assuming that the language in the title of this act was intended to embrace the object of permitting the legal voters of the township of Decatur to vote a tax upon the taxable property of the township to aid the state in carrying on the work of straightening and deepening the channel of the Dowagiac river? Yet such was the real as well as the principal object of the act. Without this legislation the state possessed full power, acting under its state board of control of swamp lands, to make the improvement named in the title of the act. The state has never acted and has no occasion to act under the provisions of act No. 323 [the act in question]. The circuit court, however, finds as a fact that the Dowagiac state ditch mentioned in the contract [for work on the ditch entered into with the state] was the same improvement as that contemplated by the special act No. 323. If this be true, then clearly the object of the act was not expressed in the title and could not be otherwise than in some manner indicating that the object of the law was to authorize or enable the townships of Decatur and Hamilton to aid the state in straightening or deepening the channel of the Dowagiac river in the county of Van Buren. As well might an act to authorize the construction of a railroad from one point to another include provisions for municipalities along its route to vote

aid in its construction, without violating the constitution."⁴ When the title is misleading and deceptive the act is void.⁵

§ 126 (91). **The title should accompany a bill in its passage through the legislature.**—It is during the passage of a bill that its title is intended by the constitution to impart information to the public and to members of the legislature of the general subject of legislation. To effectuate that intent the title should accompany the bill in all its stages through the process of enactment. As stated by Simonton, P. J.: "If a bill can be passed with a title which does not denote its subject, and after its passage the title can be amended so as for the first time to express its purpose, the constitutional provision is of little value."⁶ Only

⁴ See *Brooks v. Hydorn*, 76 Mich. 273, 42 N. W. 1122; *State v. Com'rs*, 41 Kan. 630, 21 Pac. 601.

⁵ *State v. Sholl*, 58 Kan. 507, 49 Pac. 668; *Brooks v. Hydorn*, 76 Mich. 273, 42 N. W. 1122; *New York & Greenwood Lake Ry. Co. v. Montclair*, 47 N. J. Eq. 591, 21 Atl. 493; *Sneath v. Mayer*, 64 N. J. L. 94, 44 Atl. 983; *In re Carbondale, etc. Road Co.*, 3 Pa. Co. Ct. 460; *Little Equemunk, etc. Turnpike Co.*, 2 Pa. Co. Ct. 632; *Blader v. Water Com'rs*, 122 Mich. 866, 81 N. W. 271.

⁶ *Commonwealth v. Martin*, 107 Pa. St. 185. In *Attorney-General v. Rice*, 64 Mich. 385, 31 N. W. 203, it appeared that to an act to organize the township of Ironwood, in the county of Ontonagon, it was objected that it had been substituted after the time for introducing new bills had expired for a skeleton bill entitled "An act to organize the township of Au Train;" that therefore the title of the bill as introduced did not express the object of the act as passed. The court say: "We cannot extend the

provisions of the constitution beyond its express terms in this respect. If the object of the act as passed is fully expressed in its title, the form or *status* of such title at its introduction, or during any of the stages of legislation before it becomes a law, is immaterial. To hold otherwise would, in many cases, prevent any alteration or amendment of a bill after its introduction, as, in legislative practice, it frequently becomes necessary to amend the title as introduced in order to conform to changes in the bill. The title to a bill is usually adopted after it has passed the house, and it is not an essential part of a bill, although it is of a law. *Larrison v. Peoria, etc. R. R. Co.*, 77 Ill. 17." The facts stated in the contention were not accepted by the court, and it was held that the journals not showing the facts, parol evidence was not admissible. *People v. McElroy*, 72 Mich. 446, 40 N. W. 750; *Brooks v. Hydorn*, 76 Mich. 273, 42 N. W. 1122.

such portions of a bill as were included in the subject as expressed in the title when it passed the two houses⁷ and when approved by the governor⁸ will acquire the force of law. A mere clerical mistake or a mere clerical change, not altering the sense of the title, will be disregarded.⁹ The above remains as in the first edition. But we believe that there is nothing in the constitutional provision as to title to prevent the legislature from amending or changing both the bill and its title in any manner they see fit, between its introduction and its passage. It is the *act*, or *law*, or bill *passed*, that must embrace but one subject, which subject must be expressed in the title.¹⁰ "Whether the title of the bill *as passed* is germane to the title of the bill as *introduced* is not the question. If the subject dealt with by the bill as *passed* is expressed in or germane to the subject expressed in the title *adopted with the bill as part thereof*, it complies with the constitutional requirement whether it be like or unlike the title by which the bill was *introduced*." ¹¹ Of course the two houses must concur in substantially the same title, and the bill approved must have substantially the same title as that passed.¹²

§ 127 (92). **Title and act liberally construed to sustain legislation.**¹³—In cases not clearly within the mischief intended to be remedied by requiring the subject or object of an act to be single and expressed in the title, legislation will not be adjudged void on any nice or hypercritical interpretation.¹⁴ Sound policy and legislative convenience dictate a

⁷ Binz v. Weber, 81 Ill. 288.

⁸ Stein v. Leeper, 78 Ala. 517.

⁹ Plummer v. People, 74 Ill. 361; People v. Supervisors, 16 Mich. 254.

¹⁰ Attorney-General v. Rice, 64 Mich. 385, 31 N. W. 203; State v. Doherty, 3 Idaho, 884, 29 Pac. 855; Price v. Moundsville, 43 W. Va. 523, 27 S. E. 218, 64 Am. St. Rep. 878; Cutting v. Kansas City Stock Yards Co., 82 Fed. 839; Common Council v. Schmid, 128 Mich. 379, 87 N. W. 888, 92 Am. St. Rep. 468.

¹¹ State v. Hocker, 36 Fla. 358, 18 So. 767.

¹² Weis v. Ashley, 59 Neb. 494, 81 N. W. 318, 80 Am. St. Rep. 704; Webster v. Hastings, 59 Neb. 563, 81 N. W. 510; State v. Green, 36 Fla. 154, 18 So. 334; and see *ante*, § 60.

¹³ See *ante*, § 121.

¹⁴ Gillitt v. McCarthy, 34 Minn. 318, 25 N. W. 637; St. Louis v. Green, 7 Mo. App. 468; Supervisors v. Heenan, 2 Minn. 880; People v.

liberal construction of the title and subject-matter of statutes to maintain their validity; infraction of this constitutional clause must be plain and obvious to be recognized as fatal. The supreme court of Minnesota says: "Every reasonable presumption should be in favor of the title, which should be more liberally construed than the body of the law, giving to the general words in such title paramount weight. It is not essential that the best or even an accurate title be employed, if it be suggestive in any sense of the legislative purpose. The remedy to be secured and mischief avoided is the best test of a sufficient title, which is to prevent it from being made a cloak or artifice to distract attention from the substance of the act itself. The title, if objected to, should be aided if possible by resort to the body of the act, to show that it was not intended by such title to mislead the legislature or the people, nor distract their attention from its distinctive measures."¹⁵ Similar expressions of opinion will be found in many cases.¹⁶ If the words in a title, taken in any sense or meaning which they will bear, are sufficient to cover the provisions of the act, the act will be sustained, though the meaning so given the words may not be the

Parks, 58 Cal. 635; *Rathbone v. Hopper*, 57 Kan. 240, 45 Pac. 610, 34 L. R. A. 674; *Stewart v. Thomas*, 64 Kan. 511, 68 Pac. 70; *State v. Asbury Park*, 58 N. J. L. 604, 33 Atl. 850.

¹⁵*State v. Board of Control*, 85 Minn. 165, 88 N. W. 538. In this case the title of the act indicated that its purpose was "to provide for the management and control of the charitable, reformatory and penal institutions of the state." The court held that this was sufficient to cover provisions as to normal schools, saying that "if we nullify a law because a definition used in its title is possibly faulty, though

not wholly inappropriate or foreign to the subject of the statute, we would but quibble upon a point of mere phraseology to defeat the legislative will because, in the variance of opinion, the best words were not adopted to indicate and point attention to its purpose." p. 180.

¹⁶*Ex parte Pferrmann*, 134 Cal. 143, 66 Pac. 205; *Maule Coal Co. v. Parthenheimer*, 155 Ind. 100, 55 N. E. 751; *Affholder v. State*, 51 Neb. 91, 70 N. W. 544; *State v. Becker*, 3 S. D. 29, 51 N. W. 1018; *Julien v. Model B. L. & L. Ass'n*, 116 Wis. 79, 92 N. W. 561.

most obvious or common.¹⁷ The same rules of construction apply to titles or to other parts of a statute, but it is to be remembered that these rules of construction are servants and not masters, and should not be applied to defeat the legislative intent.¹⁸ "An act to abolish survivorship in joint tenancy" was held broad enough to include estates in entirety.¹⁹ The word "trade," in the title of an anti-trust act, may include insurance.²⁰ "An act to provide cheaper text-books and for district ownership of the same" was held to include all school supplies.²¹

§ 128. Same — Illustrations. — An act in relation to grading Eighth avenue in a city was held a subject broad enough for provisions to make the grade of intersecting streets conform to the altered grade of that avenue.²² An act, among other things, for "laying out" certain portions of a city, and to provide means therefor, may contain provisions for opening streets. In so ruling the court say: "The words 'laying out' must be interpreted in a broad and liberal sense, . . . and may be regarded as covering the opening, for without such opening the laying out

¹⁷ *Id.*; *Meul v. People*, 198 Ill. 258, 64 N. E. 1106; *In re Pinckney*, 47 Kan. 89, 27 Pac. 179; *Stewart v. Thomas*, 64 Kan. 511, 68 Pac. 70; *State v. Northampton Tp.*, 52 N. J. L. 496, 19 Atl. 975.

¹⁸ *Winters v. Duluth*, 82 Minn. 127, 84 N. W. 788.

¹⁹ *Stewart v. Thomas*, 64 Kan. 511, 68 Pac. 70; overruling *Howard v. Schneider*, 10 Kan. App. 137, 62 Pac. 435.

²⁰ *In re Pinckney*, 47 Kan. 89, 27 Pac. 179.

²¹ *Affholder v. State*, 51 Neb. 91, 70 N. W. 544. The court says: "The general object of the act under consideration was to require school districts, at public expense, to furnish text-books for the use of

children attending school. . . . We do not think the term 'text-books' should be given a technical meaning, but that it is comprehensive enough to and does include globes, maps, charts, pens, ink, paper, etc., and all other apparatus and appliances which are proper to be used in the schools in instructing the youth; and we conclude, therefore, that the act under consideration is not broader than its title, and that the term 'school supplies,' found in the tenth section of the act, is not foreign to the term 'text-books' found in the title of the act, but is germane to, and comprehended and included within, the term 'text-books.'" p. 93.

²² *In re Blodgett*, 27 Hun, 12.

would be of no avail.”²³ An act “to indemnify the owners of sheep in case of damage committed by dogs,” properly contained a provision imposing a license fee upon the owners and keepers of dogs;²⁴ and an act “to regulate the foreclosure of real estate,” a provision that the right of redemption might be waived,²⁵ as well as provisions to otherwise regulate rights of redemption from sales under executions, judgments, orders or decrees of courts, and under mortgages by advertisement;²⁶ an act “for the registration of all adult persons in each county,” a provision that whenever it should be necessary to ascertain the number of adult persons with a view to any action by county commissioners or other county officers, the list on file should be taken as conclusive on that subject.²⁷ An act “to repeal all existing laws, rules and provisions of law restricting or controlling the right of a party to agree with an attorney, solicitor or counselor for his compensation, and to more accurately fix and determine the costs to be allowed to the prevailing parties in suits at law in the circuit court,” contained provisions for the taxation of costs in suits at law, including attorneys’ fees, and also permitting parties to suits to make such private arrangements with their attorneys for carrying on suits as they might agree upon. The court held that the object of the act was to settle and declare the law of compensation for skill and services in suits at law in the circuit court, and was not multifarious.²⁸ Acts entitled to regulate the *sale* of intoxicating liquor will justify provis-

²³ In re Dept. Pub. Parks, 86 N. Y. 437.

²⁴ Cole v. Hall, 103 Ill. 80.

²⁵ Atkinson v. Duffy, 16 Minn. 49. In Tuttle v. Strout, 7 id. 465, 82 Am. Dec. 108, under an act “for a homestead exemption,” exemptions of personal property having no special connection with land occupied as a homestead were sustained. Such provisions would appear

clearly beyond the scope of the title.

²⁶ Gillitt v. McCarthy, 84 Minn. 318, 25 N. W. 637.

²⁷ Eureka v. Davis, 21 Kan. 580.

²⁸ Inkster v. Carver, 16 Mich. 484. In Howland Coal & Iron Works v. Brown, 13 Bush, 681, it was held that an act professing by its title to provide for establishing a *criminal court* is not so restricted by

ions against *giving* it away to consumers.²⁹ An act "to regulate the sale of opium and suppress opium dens" was held sufficient to cover provisions forbidding a sale or gift of opium to any one but a druggist or practicing physician, except on the prescription of a practicing physician.³⁰ Expenses may be provided for under a title relating to "debts."³¹ An act with a general title for relief of a named railroad company was held properly to have authorized the extension of its tracks through certain streets and avenues of a city, and to consolidate with any other company and thus to form a new one; that an act for relief of a railroad company must be one to remove some restriction upon its powers, or to give it greater powers.³² Though a title be broad it will be restrained by construction to lawful purposes.³³ An act "to authorize the town of P. to raise money to construct a dock" was held broad enough for provisions to maintain it afterwards and to collect wharfage.³⁴ The court said: "One purpose of the constitutional provision referred to was to prevent secret or fraudulent legislation, or people from being misled by the title. . . . And that reasonable notice of the object of the bill should be given by the title;" and in referring to the foregoing title, in connection with the subject-matter, used this language: "It is true that strictly the maintenance of this work, or the power to keep and maintain the same in good repair at the expense of the town, is not identically the same as 'constructing the dock,' spoken of in the title. No one, however, could imagine that the dock was to be abandoned by the town the moment its

this title that the body of the act may not confer also some other than criminal jurisdiction. The opinion construes the word *criminal* as merely part of the name of the court, and being so, used does not preclude conferring in part civil jurisdiction.

²⁹ *Parkinson v. State*, 14 Md. 184, 74 Am. Dec. 522; *Williams v. State*, 48 Ind. 306.

³⁰ *Ex parte Yung Jon*, 28 Fed. Rep. 308.

³¹ *State v. State Auditor*, 32 La. Ann. 89.

³² *In re Prospect Park, etc. R. R. Co.*, 67 N. Y. 371.

³³ *Allor v. Board, etc.*, 43 Mich. 76, 4 N. W. 492.

³⁴ *Town of Pelham v. Woolsey*, 16 Fed. 418.

original construction was completed. Subsequent repair is necessary in the nature of the case; and authority to construct the dock would therefore, in a general sense, seem to imply and include the power to keep it constructed by means of necessary repairs." The provision for charging dockage was connected with the construction as a means of raising the money to pay the cost. A gas company was held to be a manufacturing company within the title of an act.³⁵ In "an act to define the county line of Estill county," it was held that "to define" might be taken in the sense of "to fix," "to establish," and that a provision detaching territory, not in dispute, from Estill county and adding it to another was within the title.³⁶ "Damages" may mean and include "injuries."³⁷ An act indicated by its title that it was to make provision for the unlawful levy and collection of public revenue. The act in fact provided a remedy for such unlawful levy and collection. It was held to be expressed by the title, the word "for" being taken in the sense of "in relation to," "with respect to."³⁸ Many other illustrations will be found in the later sections of this chapter.

§ 129 (93). The subject or object stated generally in the title includes incidents and subsidiary details.—It appears already from what has been said in the preceding sections and the cases which have been cited, that the constitutional provision in question permits an announcement of the subject in general terms in the title of an act; that to facilitate legislation which is intended to be germane to that subject, a very liberal construction is adopted, both of the constitutional requirement and of legislation affected by it, to sustain all laws not within the mischief intended to be remedied. It only remains to illustrate some general principles which the course of decision has established for de-

³⁵ Gas & Water Co. v. Downingtown, 193 Pa. St. 255, 44 Atl. 282.

³⁶ Walters v. Richardson, 93 Ky. 374, 20 S. W. 279.

³⁷ Colorado Milling & El. Co. v. Mitchell, 26 Colo. 284, 58 Pac. 28.

³⁸ Western Ranches v. Custer County, 28 Mont. 278.

termining the singleness of legislative subjects; whether the provisions under them are congruous and pertinent; and the consequences of a total or partial departure from the constitutional injunction.

Where the title of a legislative act expresses a general subject or purpose which is single, all matters which are naturally and reasonably connected with it, and all measures which will or may facilitate the accomplishment of the purpose so stated, are properly included in the act, and are germane to its title.³⁹ The degree of relationship of each

³⁹ *Montgomery M. B. & L. Ass'n v. Robinson*, 69 Ala. 413; *Alabama Great So. R. R. Co. v. Reed*, 124 Ala. 253, 27 So. 19, 82 Am. St. Rep. 166; *Golden Canal Co. v. Bright*, 8 Colo. 144; *People v. Goddard*, 8 Colo. 432; *People v. Wright*, 30 Colo. 439, 71 Pac. 365; *Allen v. Teson*, 50 Ga. 374; *Black v. Cohen*, 52 Ga. 621; *Goldsmith v. Georgia R. R. Co.*, 62 Ga. 485; *Halleman v. Halleman*, 65 Ga. 476; *Seay v. Bank of Rome*, 66 Ga. 609; *Smith v. Bohler*, 72 Ga. 546; *Brown v. State*, 78 Ga. 38; *People v. Brislin*, 80 Ill. 423; *Abington v. Cabeen*, 106 Ill. 200; *McChesney v. Chicago*, 159 Ill. 223, 42 N. E. 894; *Central Plank Road Co. v. Hannaman*, 22 Ind. 484; *McCaslin v. State*, 44 Ind. 151; *Shipley v. Terre Haute*, 74 Ind. 297; *Ross v. Davis*, 97 Ind. 79; *Wishmier v. State*, 97 Ind. 160; *Crawfordsville, etc. T. Co. v. Fletcher*, 104 Ind. 97, 2 N. E. 243; *State v. Gerhardt*, 145 Ind. 439, 44 N. E. 469; *Maule Coal Co. v. Parthenheimer*, 155 Ind. 100, 55 N. E. 751; *State v. Squiers*, 26 Iowa, 345; *Farmers' Ins. Co. v. Highsmith*, 44 Iowa, 330; *Christie v. Life Indemnity & Invest. Co.*, 82 Iowa, 360, 48 N. W. 94; *Bowman v. Cochrill*, 6 Kan. 311; *Wilson v. Herink*, 64 Kan. 607, 68 Pac. 72; *Louisville, etc. R. R. Co. v. Ballard*, 2 Met. (Ky.) 165; *Phillips v. Covington, etc. Bridge Co.*, 2 Met. (Ky.) 219; *Smith v. Commonwealth*, 8 Bush. 108; *Howland Coal & Iron Works v. Brown*, 13 Bush. 681; *McArthur v. Nelson*, 81 Ky. 67; *Adams v. Webster*, 26 La. Ann. 142; *Mayor, etc. v. Reitz*, 50 Md. 575; *Stevens v. State*, 89 Md. 669, 43 Atl. 929; *Atkinson v. Duffy*, 16 Minn. 49; *Gillitt v. McCarthy*, 34 Minn. 318, 25 N. W. 637; *Putnam v. St. Paul*, 75 Minn. 514, 78 N. W. 90; *St. Louis v. Tiefel*, 42 Mo. 578; *Ewing v. Hoblitzelle*, 85 Mo. 64; *Klein v. Kinkead*, 16 Nev. 194; *State v. Atherton*, 19 Nev. 332, 10 Pac. 901; *Union v. Rader*, 39 N. J. L. 509; *Campbell v. Board*, 45 N. J. L. 241; *Daubman v. Smith*, 47 N. J. L. 200; *Slocum v. Neptune*, 68 N. J. L. 595, 53 Atl. 301; *Kirkpatrick v. New Brunswick*, 40 N. J. Eq. 46; *People v. Commissioners*, 47 N. Y. 501; *In re Mayer*, 50 N. Y. 504; *In re Department of Public Works*, 86 N. Y. 437; *Astor v. Arcade Ry. Co.*, 113 N. Y. 93, 20 N. E. 594, 2 L. R. A. 789; *People v. Sutphin*, 166 N. Y. 163, 59 N. E. 770; *Mosier v. Hilton*, 15

provision is not material, if it legitimately tends to the end disclosed in the title.⁴⁰ Whatever the scope of the subject, it comprehends not only its constituent parts, but its general incidents, and those which pertain to either of its parts, and everything contributory to the purpose the title expresses or necessarily implies.⁴¹ This principle is recognized in several of the constitutions, which confine an act to a single subject, "and the matters properly connected therewith."

"The title to a bill may be general, and it is not essential that it specify every clause in the proposed statute. It is sufficient if they are all referable and cognate to the subject expressed. When the subject is expressed in general terms, everything which is necessary to make a complete enactment in regard to it, or which results as a complement of the thought contained in the general expression, is embraced in and authorized by it. If the subject-matter is within the scope of the title, the constitutional requirement is met."⁴²

Barb. 657; *Fishkill v. Fishkill*, 22 Barb. 634; *In re De Vaucene*, 31 How. Pr. 337; *State v. N. D. Children's Home Soc.*, 10 N. D. 493, 88 N. W. 273; *State v. Shaw*, 22 Ore. 287, 29 Pac. 1028; *State v. Steele*, 39 Ore. 419, 65 Pac. 515; *Seabolt v. Commissioners*, 187 Pa. St. 318, 41 Atl. 22; *Commonwealth v. Charity Hospital*, 198 Pa. St. 270, 47 Atl. 980; *State v. Morgan*, 2 S. D. 32, 48 N. W. 314; *State v. McConnell*, 3 Lea. 332; *State v. Whitworth*, 8 Lea. 594; *Cole Mfg. Co. v. Falls*, 90 Tenn. 466, 16 S. W. 1045; *State v. Yardley*, 95 Tenn. 546, 32 S. W. 481, 34 L. R. A. 656; *English v. State*, 7 Tex. App. 171; *Ingles v. Strauss*, 91 Va. 209, 21 S. E. 490; *Maling v. Crummey*, 5 Wash. 222, 31 Pac. 600; *State v. Sharpless*, 31 Wash. 191, 71 Pac. 137; *Shields v. Bennett*, 8 W. Va. 83; *Yellow River Imp. Co. v. Arnold*, 46 Wis. 214; *Diana Shoot-*

ing Club v. Lamereux, 114 Wis. 44, 89 N. W. 880, 90 Am. St. Rep. 833; *Unity v. Burrage*, 103 U. S. 447, 26 L. Ed. 405; *Ackley School Dist. v. Hall*, 113 U. S. 135, 5 S. C. Rep. 371, 28 L. Ed. 954; *Mahomet v. Quackenbush*, 117 U. S. 508, 6 S. C. Rep. 858, 29 L. Ed. 982; *Farmers' L. & T. Co. v. Oregon, etc. R. R. Co.*, 24 Fed. 407; *Skinner v. Garnett Gold Min. Co.*, 96 Fed. 735.

⁴⁰ *In re Mayer*, 50 N. Y. 504.

⁴¹ *In re Upson*, 89 N. Y. 67.

⁴² *State v. Tibbet*, 52 Neb. 228, 71 N. W. 990, 66 Am. St. Rep. 492; also *Carson v. State*, 69 Ala. 235; *State v. Tucker*, 46 Ind. 355; *State v. Baum*, 33 La. Ann. 981; *McGrath v. State*, 46 Md. 633; *St. Louis v. Green*, 7 Mo. App. 468; *Floyd v. Perrin*, 30 S. C. 1; *Fahey v. State*, 27 Tex. App. 146. The Illinois supreme court says: "Courts always give a liberal and not a hypercriti-

An act of Arkansas was entitled "An act to provide for the erection of a new state capitol." The act located the capitol on the grounds then occupied by the state penitentiary and authorized the penitentiary commissioners to procure a new site and erect a new penitentiary thereon. It was held that the act embraced but one subject, which was the building of a new capitol on the grounds then occupied by the penitentiary, and that the provisions referred to were incidental to the main purpose.⁴³

§ 130 (97). The subject or object stated generally in the title includes the abolition of things inconsistent.—It is germane to the subject of an act to repeal previous acts relating to it, or inconsistent with it.⁴⁴ Such repeal is ancillary to the purpose of the new legislation. But the repeal of an act not inconsistent with the new enactment and not related to its subject-matter is not within the title and such repeal is void.⁴⁵ "The constitutional requirement

cal determination to this restriction. All matters are properly included in the act which are germane to the title. The constitution is obeyed, if all the provisions relate to the one subject indicated in the title, and are parts of it, or incident to it, or reasonably connected with it, or in some reasonable sense auxiliary to the object in view. It is not required that the subject of the bill shall be specifically and exactly expressed in the title, or that the title should be an index of the details of the act. When there is doubt as to whether the subject is clearly expressed in the title, the doubt should be resolved in favor of the validity of the act." *Ritchie v. People*, 155 Ill. 98, 120, 40 N. E. 454, 462, 46 Am. St. Rep. 315, 29 L. R. A. 79.

⁴³ *State v. Sloan*, 66 Ark. 575, 53 S. W. 47, 74 Am. St. Rep. 106.

⁴⁴ *Yellow River Imp. Co. v. Arnold*, 46 Wis. 215; *State v. County Com'rs*, 13 Am. & Eng. Cor. Cas. 203; *Gabbert v. Jeffersonville R. R. Co.*, 11 Ind. 365, 71 Am. Dec. 358; *Burke v. Monroe County*, 77 Ill. 610; *Martin v. Hewitt*, 44 Ala. 418; *Tolford v. Church*, 66 Mich. 431, 83 N. W. 913; *State v. Aulman*, 76 Iowa, 624, 41 N. W. 379; *Muldoon v. Levi*, 25 Neb. 457, 41 N. W. 280; *Ridge Avenue Ry. Co. v. Philadelphia*, 124 Pa. St. 219, 16 Atl. 741; *Trackman v. People*, 22 Colo. 83, 43 Pac. 662; *People v. Backus*, 11 App. Div. 147, 42 N. Y. S. 899; *Commonwealth v. Moir*, 199 Pa. St. 534, 49 Atl. 851, 85 Am. St. Rep. 801.

⁴⁵ *Los Angeles v. Hance*, 122 Cal. 77, 54 Pac. 387; *State v. Pierce*, 51 Kan. 241, 32 Pac. 924; *Bryan v. Board of Education*, 90 Ky. 322, 13 S. W. 276; *Howlett v. Cheetham*, 17 Wash. 626, 50 Pac. 522; *Kennedy*

that every act shall embrace but one subject, which must be expressed in the title, is not violated by an omission to mention in the title of an act relating to a single subject, the repeal of prior enactments inconsistent with the new enactment, if the repealing clause is also confined to repealing statutes relating to that one subject; but when the repealing clause departs from the subject embraced in the title of the act, and purports to repeal a statute relating to a subject not indicated by such title, it comes within the prohibition of the constitution and must be treated as void and of no effect as to the subject not mentioned in the title.”⁴⁶

When one legislative scheme or system is intended to supersede another, the subject of the act which makes the change naturally includes the removal of the existing legislative institution intended to be abolished or reorganized, in whole or in part, and the establishment of the new in its place.⁴⁷ One act may divide the state into judicial circuits for judicial purposes, provide for election of judges, fix the time for holding courts; also abolish an existing court, and transfer its unfinished business to the new court.⁴⁸ So one act properly includes all provisions for effecting the change of a steam railroad running in a tunnel in the street of a city to a surface railway, including the subject of compensation to the owner of the railroad and raising the means to pay it.⁴⁹ It may happen, when partial substitutions occur, that a residuum of the previous state of things will remain, in a disrupted condition, requiring some fresh legislation not germane to the disrupting act. In such case the whole situation will not be rearranged by one act. The

v. Le Moyne, 188 Ill. 255, 58 N. E. 903.

⁴⁶ Northern Pac. Exp. Co. v. Met-
schan, 90 Fed. 80, 83, 32 C. C. A. 580.

⁴⁷ Luehrman v. Taxing Dist., 2
Lea, 425; Smith v. Commonwealth,
8 Bush, 108; State v. McConnell, 8
Lea, 332; Mullen v. State, 84 Ind.

540; Phillips v. Mayor, etc., 1 Hilt.
488; Supervisors v. Heenan, 2
Minn. (281), 833.

⁴⁸ State v. Tucker, 46 Ind. 855;
State v. Steele, 39 Ore. 419, 65 Pac.
515.

⁴⁹ People v. Lawrence, 41 N. Y.
187.

unity of the original condition being destroyed, the validity of the new legislation will depend on its own subject being single.⁵⁰

§ 131. Where the title expresses a general subject, and also details, particulars or sub-titles.— It is common for the title of an act to express a general subject, and to accompany it with the specification of details or particulars. Titles are often thus rendered very lengthy and complicated and sometimes appear to express two or more subjects. But if the particulars are or may be incidental or germane to the general title or main purpose, the title is single, and an act embracing the same general subject and particulars is valid.⁵¹ The question cannot be determined by regarding the title alone, but the body of the act must be looked to, and if all the provisions of the act are fairly referable to one general subject and that subject is expressed in the title, the act is valid.⁵² In such cases the legislature is not

⁵⁰ Cutlip v. Sheriff, 3 W. Va. 588.

⁵¹ Mitchell v. State, 134 Ala. 392, 82 So. 687; Farmers' Independent Ditch Co. v. Agricultural Ditch Co., 22 Colo. 513, 45 Pac. 444, 55 Am. St. Rep. 149; Frost v. Pfeiffer, 26 Colo. 338, 58 Pac. 147; People v. Nelson, 133 Ill. 565, 27 N. E. 217; People v. Brooks, 101 Mich. 98, 59 N. W. 444; Soukup v. Van Dyke, 109 Mich. 679, 67 N. W. 911; In re Ryan, 20 Mont. 64, 50 Pac. 129; Van Horn v. State, 46 Neb. 62, 64 N. W. 365; Cooperrider v. State, 46 Neb. 84, 64 N. W. 372; Railroad Co. v. Crider, 91 Tenn. 489, 19 S. W. 618; In re Fourth Judicial Dist., 4 Wyo. 133, 32 Pac. 850; Baker v. Kaiser, 126 Fed. 317 (C. C. A.). In Hronek v. People, 134 Ill. 139, 144, 24 N. E. 861, 8 L. R. A. 837, it is said: "It is not necessary that the title shall express all of the minor divisions of the general subject to which the

act relates, and it is sufficient if it express the general subject of the act, and all the minor subdivisions germane to the general subject will be held to be included in it. But if the title expresses such minor subdivisions which, without such expression, would be held to be included within the general subject, such expression will not render the title obnoxious to the constitutional provision."

⁵² Van Horn v. State, 46 Neb. 62, 64 N. W. 365; Cooperrider v. State, 46 Neb. 84, 64 N. W. 372. In the first case it is said: "The constitutional inhibition is against the bill's containing more than one subject. The title must clearly express the subject; but, provided the bill itself contains but one subject, and this subject is clearly expressed in the title, it matters not although the title, read independ-

limited to the particulars or details specified, but may enact any provision germane to the general title, unless the title is so worded as to show a clear intent to confine the act to the particulars mentioned.⁵³ The supreme court of Pennsylvania says: "When a general title, sufficient to cover all the provisions of an act, is followed by specifications of the particular branches of the subject with which it proposes to deal, the scope of the act is not limited nor the validity of the title impaired except as to such portions of the general subject as legislators and others would naturally and reasonably be led by the qualifying words to suppose would not be affected by the act. This is the rule established by all our cases. It is an application of the maxim *expressio unius exclusio alterius*. The express enumeration of the specific subjects must be affirmatively misleading as to the intent to include others, or the title will not be made invalid by it."⁵⁴

§ 132. Effect of title referring to act or other sources of information.—The command of the constitution is that the subject shall be expressed in the title. The supreme court of Texas says: "The constitution declares that the 'subject shall be expressed in the title,' and it cannot be said that this has been done where the title does no more than to furnish a reference to some other writing, document or law from which by search the true purpose of the title may be ascertained. . . . No one would contend that a title as follows, 'An act in reference to the subject embraced in the bill to which this is the title,' would be sufficient, although such a title attached to a bill would give most easy reference to sources of information from which the subject of the contemplated law might be ascertained. This is so because the

ently of the bill, may seem double. We therefore look to the bill itself to ascertain whether it contains more than one subject, and having ascertained that it contains but one, then we look to the title to see if that subject is clearly ex-

pressed therein. If so, the constitutional provision we have been discussing is not violated." p. 72.

⁵³ State v. Atherton, 19 Nev. 332, 10 Pac. 901.

⁵⁴ In re Sugar Notch Borough, 192 Pa. St. 349, 43 Atl. 985.

constitution requires the subject of an act to be given in the title to it, and a mere reference to something else for the information thus required to be given is not sufficient.”⁵⁵ An act to authorize a city “to pledge not exceeding one-fourth of its general revenue for the payment and security of judgments and claims *herein specified*” was held valid as to its title.⁵⁶

§ 133. Errors in title, and whether title can be corrected by act or otherwise.—Errors are more likely to occur in amendatory acts than in original acts, and this branch of the subject is treated in a subsequent section.⁵⁷ Meaningless words and phrases may be rejected from a title,⁵⁸ and surplusage may generally be disregarded.⁵⁹ Errors which are manifest from an inspection of the title itself, or from the title taken in connection with facts of which the court will take judicial notice, may be corrected by the court, or the title read as if such corrections had been made. But the title cannot be changed or corrected by reference to the act alone, as that would destroy the efficacy of the constitutional provision.⁶⁰

⁵⁵ *Gunter v. Texas Land & Mortg. Co.*, 82 Tex. 496, 17 S. W. 840. The true and actual subject or object must be expressed in the title and not by way of reference to something else to show it. *People v. Briggs*, 50 N. Y. 553; *Tingue v. Port Chester*, 101 N. Y. 294, 303, 4 N. E. 625; *People v. Fleming*, 7 Colo. 231, 3 Pac. 70; *Pennington v. Woolfolk*, 79 Ky. 13.

⁵⁶ *Austin v. McCall*, 95 Tex. 565, 68 S. W. 791.

⁵⁷ See *post*, § 138.

⁵⁸ *Allen v. Hopkins*, 62 Kan. 175, 61 Pac. 750.

⁵⁹ See *ante*, § 131; *Thomas v. State*, 124 Ala. 48, 27 So. 815.

⁶⁰ *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841; *Turnquist v. Cass County Dr. Com'rs*, 11 N. D.

514, 92 N. W. 852. The title of the act in question in these cases was to provide for the allowance of additional attorneys' fees against the *defendant* in actions to enjoin drainage proceedings or the levy and collection of taxes and assessments. The act provided for such costs against the *plaintiff*. The court held that it could not read the word “defendant” in the title as “plaintiff” and held the act void. The court, in the first case, says: “As has been seen, errors in titles are not necessarily always fatal. When they are obvious from an inspection of the title, or when an inadvertence is apparent from facts which courts and the public are bound to know, and it is apparent that the error could not have

An act entitled "An act *repealing* sections 470 and 472, art. IX, of the political code, relating to the appointment of the state land agent and his annual salary," in fact amended both said sections so as to read as follows, etc. The act was held valid.⁶¹ "But we cannot think," says the court, "the misuse of the word 'repeal' in the title must result in overthrowing the whole law, inasmuch as the other words of the title to the bill very clearly point out the sections, chapter, title, code and subject to be affected by the provisions of a bill."

§ 134. The subject may be expressed by the description of its parts or subdivisions.—The subject of an act may be expressed generally in the title,⁶² or spelled out from details, and occasionally from details which are independent and unconnected except through some general subject as *cousins german* are related through a common ancestor.⁶³

misled either the legislature or the public, and the true intent is certain, the error will be disregarded. But we cannot concede that words or language appearing in titles can be established as inadvertently used, and corrected as such, solely by reference to the contents of the act. Such a doctrine would utterly destroy the safeguards afforded by the requirement that the subject of legislation shall be expressed in the title, and thus make the act, instead of the title, controlling as to the subject of legislation. There are no facts of which we can take judicial notice, neither are there any reasons suggested by an inspection of this title which disclose that the word 'defendants' was inserted in the title inadvertently. The title as it reads clearly expresses a subject of legislation. The subject of legislation embodied in the act is an entirely different one, and is not

expressed in the title. The error in the use of the word 'defendants,' if error it was, appeared in the bill as originally introduced, and was perpetuated through its passage and final approval. Under these circumstances we have no reason for saying, and cannot say, that no one within or without the legislature was misled by the error in the title."

⁶¹ State v. Page, 20 Mont. 238, 50 Pac. 719.

⁶² *Ante*, § 121.

⁶³ Attorney-General v. Joy, 55 Mich. 94; State v. Young, 47 Ind. 150; Bitters v. Board, etc., 81 Ind. 125; State v. Board, etc., 26 Ind. 522; State v. Miller, 45 Mo. 495; State v. Bowers, 14 Ind. 195; Lauer v. State, 22 Ind. 461; In re Dept. Pub. Parks, 86 N. Y. 437; People v. Ins. Co., 19 Mich. 392; Garvin v. State, 13 Lea, 162; Neifing v. Town of Pontiac, 56 Ill. 172; People v. Banks, 67 N. Y.

According to the authorities the general subject need not appear in the title, if it is clearly disclosed or readily inferred from the details expressed.⁶⁴ Two examples of such titles follow: "An act to change and regulate the grand jury system by reducing the number of grand jurors, providing that a grand jury shall be summoned only when ordered by the court, and providing for presentation by information and the procedure thereunder." The act followed the title and was held to embrace but one subject, "the accusation of persons accused of crime," and that that subject was sufficiently expressed in the title.⁶⁵ "An act regulating the weighing of coal, providing for the safety of employees, protecting persons and property injured, providing for the proper ventilation of mines, prohibiting boys and females from working in mines, conflicting acts repealed, and providing penalties for violation." The real subject of this act was held to be *coal mines* and to be expressed by the title.⁶⁶

568; *Ramognano v. Crook*, 85 Ala. 226, 3 So. 845; *Burnside v. Lincoln Co. Court*, 86 Ky. 423, 6 S. W. 276; *Indianapolis v. Huegele*, 115 Ind. 581, 18 N. E. 172.

⁶⁴ *Central Union Tel. Co. v. Fehring*, 146 Ind. 189, 45 N. E. 64; *Isenhour v. State*, 157 Ind. 517, 62 N. E. 40, 87 Am. St. Rep. 228; *State v. Sanders*, 42 Kan. 228, 21 Pac. 1078; *State v. La Vaque*, 47 Minn. 106, 49 N. W. 525; *Ex parte Livingston*, 20 Nev. 282, 21 Pac. 322; *Rodenbaugh v. Phila. Traction Co.*, 190 Pa. St. 358, 42 Atl. 953; *Bowden v. Phila. etc. R. R. Co.*, 196 Pa. St. 562, 46 Atl. 843.

⁶⁵ *In re Boulter*, 5 Wyo. 329, 40 Pac. 520.

⁶⁶ *Maule Coal Co. v. Parthenheimer*, 155 Ind. 100, 55 N. E. 751. The court says: "It may be asserted that the constitutional restriction

is obeyed by the legislature in the enactment of a law, if its provisions relate to the one subject as indicated by the title, and in some reasonable sense may be considered as auxiliary to such subject. The title of the law in controversy is not a model, and, perhaps, is open to criticism. It at least may be said, however, that it substantially responds to the mandate of the constitution. The form and terms employed in framing the title possibly operate to give expression, by parts, to the general subject to which the proposed legislation relates. When these parts, as expressed in the title, are taken and considered collectively, they constitute such a title as serves fairly to point out or disclose the general subject-matter, coal mines, over which the legislature proposes to

§ 135. Words of act restrained or qualified by title.—The words of an act will be restrained or qualified by the title. “By force of our constitutional provision, requiring the object of every law to be expressed in its title, the title limits the sphere within which the enacting clause can operate.”⁶⁷ “An act to make it unlawful for a person to *fraudulently* dispose of the property of another,” made it penal for any person to sell, dispose of, or convert to his own use, the property of another without his consent. It was held that the general words of the act were qualified or limited by the title to a *fraudulent* disposition of another’s property.⁶⁸

§ 136. Acts to prohibit, regulate, protect, etc., imply penalties and civil liabilities.—An act to regulate any specified business, or the use of property, or regulating human conduct in any way, or to prohibit acts or things, or to protect persons or property or public or private rights, may include penal provisions,⁶⁹ or provisions imposing a civil lia-

legislate, and this renders it sufficient.”

⁶⁷ Allen v. Bernards Tp., 57 N. J. L. 303, 31 Atl. 219. To same effect: State v. Hartford Fire Ins. Co., 99 Ala. 221, 13 So. 862; Comer v. State, 103 Ga. 69, 29 S. E. 501; Martin v. South Salem Land Co., 94 Va. 28, 26 S. E. 591.

⁶⁸ Commonwealth v. Barney, 24 Ky. L. Rep. 2352, 74 S. W. 181. See further on the subject, *post*, ch. IX.

⁶⁹ In re Pratt, 19 Colo. 188, 84 Pac. 680; Alberson v. Mayor, 82 Ga. 30, 8 S. E. 869; McCook v. State, 91 Ga. 740, 17 S. E. 1019; Maynard v. Marshall, 91 Ga. 840, 18 S. E. 403; Plumb v. Christie, 103 Ga. 686, 30 S. E. 759; Sykes v. People, 127 Ill. 117, 19 N. E. 705; People v. Blue Mountain Joe, 129 Ill. 370, 21 N. E. 923; Cohn v. People, 149 Ill. 486, 37 N. E. 60, 41 Am. St. Rep. 304, 23 L.

R. A. 821; State v. Gerhardt, 145 Ind. 439, 44 N. E. 469; State v. Stunkle, 41 Kan. 456, 21 Pac. 675; State v. Bush, 45 Kan. 138, 25 Pac. 614, 632; Helvenstine v. Yantis, 88 Ky. 695, 11 S. W. 811; Hartford Fire Ins. Co. v. Raymond, 70 Mich. 485, 38 N. W. 474; People v. Miller, 88 Mich. 833, 50 N. W. 296; Burrows v. Delta Trans. Co., 106 Mich. 582, 64 N. W. 501, 29 L. R. A. 468; State v. Power, 63 Neb. 496, 88 N. W. 769; State v. Corson, 67 N. J. L. 178, 50 Atl. 780; Weil v. State, 46 Ohio St. 450, 21 N. E. 643; State v. Koshland, 25 Ore. 178, 35 Pac. 32; Commonwealth v. Depuy, 148 Pa. St. 201, 23 Atl. 896; Commonwealth v. Jones, 4 Pa. Supr. Ct. 362; Commonwealth v. Beatty, 15 Pa. Supr. Ct. 5; State v. Morgan, 2 S. D. 32, 48 N. W. 314; Hathaway v. McDonald, 27 Wash. 659, 67 Pac. 710, 91

bility or giving a civil remedy,⁷⁰ without such penalties, liabilities or remedies being referred to in the title. The imposition of both civil and criminal liabilities in the same act does not create a duality of subjects.⁷¹

§ 137 (101). **The title and subject of amendatory and supplementary acts — General principles.**— The constitutional requirement under discussion as applied to acts of this character when they contain matter which might appropriately have been incorporated in the original act under its title is satisfied generally if the amendatory or supplemental act identifies the original act by its title, and declares the purpose to amend or supplement it.⁷² Under such a title,

Am. St. Rep. 889; *Alberson v. Mayor*, 82 Ga. 30, 8 S. E. 869. Compare *State v. McDonald*, 25 Wash. 122, 64 Pac. 912.

⁷⁰ *Barnhill v. Teague*, 96 Ala. 207, 11 So. 444; *Beebe v. Tolerton*, 117 Iowa, 593, 91 N. W. 905; *De Both v. Rich Hill Coal & Min. Co.*, 141 Mo. 497, 42 S. W. 1081; *Peterson v. State*, 104 Tenn. 127, 56 S. W. 834.

⁷¹ *Commonwealth v. Moore*, 2 Pa. Supr. Ct. 162.

⁷² *Street v. Hooten*, 181 Ala. 492, 32 So. 580; *Leake v. Colgan*, 125 Cal. 413, 58 Pac. 69; *Beach v. Von Detten*, 139 Cal. 462, 73 Pac. 187; *Davidson v. Von Detten*, 139 Cal. 467, 73 Pac. 189; *Gibson v. State*, 16 Fla. 291; *Saunders v. Provisional Municipality*, 24 Fla. 226; *Jones v. Columbus*, 25 Ga. 610; *Alberson v. Mayor*, 82 Ga. 30, 8 S. E. 869; *Newman v. State*, 101 Ga. 534, 28 S. E. 1005; *Jones v. Lake View*, 151 Ill. 663, 38 N. E. 688; *Morrison v. People*, 196 Ill. 454, 63 N. E. 989; *Brandon v. State*, 16 Ind. 197; *Bell v. Marsh*, 137 Ind. 226, 36 N. E. 858; *Lewis v. State*, 148 Ind. 346, 47 N. E. 675; *Udell v. Citizens' St. Ry. Co.*,

152 Ind. 507, 52 N. E. 799; *Morford v. Unger*, 8 Iowa, 82; *Williams v. Keokuk*, 44 Iowa, 88; *Iowa Savings & L. Ass'n v. Selby*, 111 Iowa, 402, 82 N. W. 968; *Second German Am. B. Ass'n v. Newman*, 50 Md. 62; *Swartwout v. Railroad Co.*, 24 Mich. 389; *Hoffman v. Parsons*, 27 Minn. 236; *Holden v. Supervisors*, 77 Mich. 202, 43 N. W. 969; *Detroit v. Wayne Circuit Judge*, 112 Mich. 317, 70 N. W. 894; *Fort St. Union Depot Co. v. Com'r of R. R.*, 118 Mich. 340, 76 N. W. 631; *Attorney-General v. Bolger*, 128 Mich. 355, 87 N. W. 366; *State v. Madson*, 43 Minn. 438, 45 N. W. 856; *Willis v. Mabon*, 48 Minn. 140, 50 N. W. 1110, 81 Am. St. Rep. 626; *St. Louis v. Tiefel*, 42 Mo. 578; *Perry v. Gross*, 25 Neb. 826, 4 N. W. 799; *In re White*, 33 Neb. 812, 51 N. W. 287; *Kleckner v. Turk*, 45 Neb. 176, 63 N. W. 469; *State v. Bemis*, 45 Neb. 724, 64 N. W. 348; *State v. Cornell*, 54 Neb. 72, 74 N. W. 432; *State v. Newark*, 84 N. J. L. 236; *Rahway Savings Inst. v. Rahway*, 53 N. J. L. 48, 20 Atl. 756; *People v. Willsea*, 60 N. Y. 507; *Matter of New York & L. I.*

alterations by excision, addition or substitution may be made, and any provisions may be enacted which might have

Bridge Co., 148 N. Y. 540, 42 N. E. 1088; Bohmer v. Haffen, 161 N. Y. 390, 55 N. E. 1047; Wilcox v. Baker, 22 App. Div. 299, 47 N. Y. S. 900; Ex parte Howe, 26 Ore. 181, 37 Pac. 536; State Line, etc. R.-R. Co.'s Appeal, 77 Pa. St. 429; Craig v. First Presb. Church, 88 Pa. St. 42; Millvale v. Evergreen Ry. Co., 131 Pa. St. 1, 18 Atl. 993, 7 L. R. A. 369; Philadelphia v. Ridge Ave. Ry. Co., 142 Pa. St. 484, 21 Atl. 982, 24 Am. St. Rep. 512; Mt. Joy v. Turnpike Co., 182 Pa. St. 581, 38 Atl. 411; Rodgers' Petition, 192 Pa. St. 97, 43 Atl. 475; Commonwealth v. Gilligan, 195 Pa. St. 504, 46 Atl. 124; Commonwealth v. Shiras, 195 Pa. St. 515, 46 Atl. 127; Commonwealth v. Howell, 195 Pa. St. 519, 46 Atl. 1102; Commonwealth v. Brown, 91 Va. 762, 21 S. E. 357; Robey v. Shepard, 42 W. Va. 286, 26 S. E. 278; Mills v. Charleton, 29 Wis. 400, 9 Am. Rep. 578; Yellow River Imp. Co. v. Arnold, 46 Wis. 214, 224; National Bank v. Commissioners, 14 Fed. 239. See Hyman v. State, 87 Tenn. 109, 9 S. W. 372; Hyde Park v. Chicago, 124 Ill. 156, 16 N. E. 222.

In State v. Smith, 85 Minn. 257, it appears that outside of the general law for the assessment and collection of taxes an independent or cumulative act *in pari materia* was in force requiring notice of the expiration of redemption after a tax sale. A subsequent statute, entitled generally as an act to amend the general law, contained a provision expressly repealing this separate statute, which was probably

equivalent to providing that redemption should expire absolutely by lapse of the redemption period without notice to the party who had the right of redemption. This was matter germane to the original bill which was amended, and under the rule stated in the text the title was sufficient. The court, however, held otherwise, and Dickinson, J., delivering the opinion of the court, said: "An amendatory law is for the amendment not of what *might have been* enacted under the title of the original statute, but of what *was* enacted; not of what the original law might have been, but of what it was. Hence the sufficiency of the title of an act merely declared to be amendatory of a prior law, to justify the legislation which may be enacted under it, depends not alone upon the fact that the title of the original statute was so comprehensive that the legislation might have been properly enacted in such prior law, but it depends also upon the nature and extent of the prior enactment to amend which is the declared purpose or subject of the latter act. This seems self-evident; but to test the correctness of the rule invoked, let us apply it to supposable cases. We will assume that under the title of the law of 1878, "An act to provide for the assessment and collection of taxes," the only legislation adopted had been a change of the prior law in respect to the time of meeting of the state board of equalization or

been incorporated in the original act.”⁷³ “A title which expresses a purpose to amend an earlier enactment, referring to the earlier enactment by its title, in which the subject of the proposed legislation is clearly expressed, is no more or less than the expression of a purpose to deal with the subject so expressed in the title of the earlier enactment.”⁷⁴

of the manner of publishing the delinquent list. Now, suppose a later act, declared in its title to be amendatory of that act, to consist of two sections; the first amending the prior act by prescribing a different time for the meeting of the state board or a different manner of publishing the delinquent list. The second section, we will suppose, simply declares the repeal of section 2 of a law of 1873 (Sp. Laws, 1873, ch. 111), authorizing railroad corporations to adopt the scheme of substituted taxation in that act provided; or let the supposed second section declare the repeal of the law of 1877 (chapter 105), which required an annual return by railroad corporations of land sold from their untaxable land grant, so that the same might be properly subjected to taxation; or again, let the supposed second section be like that now in question,—simply the repeal of the act of 1877, respecting the giving of notice of the expiration of the period for redemption; or let us suppose that the so-called amendatory act had consisted only of such repeal of the law of 1877. In such cases the mind is at once impressed with the incongruity between the subject of the act as expressed in its title and the enactment under it. Yet the principle relied upon

by the respondent would sustain such legislation, because it might have been adopted under the title of the original law. The fault in the asserted rule is that it does not regard the nature and extent of the original enactment which it is the declared purpose of the later act to amend, but only the title of it; it rests upon the assumption that the enactment was as comprehensive as under its title it might have been. We think it cannot be relied upon to aid in the determination of such cases, and, if recognized as a rule without qualification, that it would open a way to the accomplishment of the very evils which the constitutional provision was intended to prevent.” Re-affirmed in *State ex rel. Nash v. Madson*, 43 Minn. 438, 45 N. W. 856.

⁷³ *Id.*; *Robinson v. Lane*, 19 Ga. 837.

⁷⁴ *Street v. Hooten*, 131 Ala. 492, 501, 82 So. 580. In *State v. Porter*, 53 Minn. 279, 285, 55 N. W. 134, it is said: “The substance of what has been said, so far as we need to repeat it at this time, is that an amendatory law is for the amendment, not of what might have been enacted under the title of the original statute, but of what was enacted. Hence the sufficiency of the title of an act merely declared

The title of the amendatory act need not specify or indicate the nature of the amendment.⁷⁵ And where it gives the title of the act amended it need not refer to its chapter number or date of passage.⁷⁶ It of course follows that provisions of the amendatory act not germane to the subject expressed in the title of the original act are unconstitutional and void.⁷⁷ In Idaho it has been held that an amendatory act may introduce new matter, not expressed in the title of the original act, nor germane thereto, provided the subject of such new matter is indicated in the title of the amendatory act.⁷⁸

§ 138. Effect of error or uncertainty in title of amendatory act.—Where the title of the amendatory act recites the title of the act amended, and there is only one act with that title, an error in referring to the date of the passage or approval of the act amended will not vitiate the title.⁷⁹

to be amendatory of a prior law, to justify the legislation which may be enacted under it, depends, not alone upon the fact that the title to the original statute was so comprehensive that the legislation in question might have been properly enacted in such prior law, but it depends also upon the nature and extent of the prior enactment, to amend which is the declared purpose or subject of the later act." The decision of the court does not go quite as far as the quotation, but is to the effect that an amendment to one act cannot introduce matter which is covered by another independent act, although the matter so introduced is germane to the title of the act amended. See *post*, § 139.

⁷⁵ *Leake v. Colgan*, 125 Cal. 413, 58 Pac. 69; *Fort St. Union Depot Co. v. Com'r of R. R.*, 118 Mich. 840, 76 N. W. 631.

⁷⁶ *Willis v. Mabon*, 48 Minn. 140, 50 N. W. 1110, 31 Am. St. Rep. 626.

⁷⁷ *State v. Davis*, 130 Ala. 148, 30 So. 844, 89 Am. St. Rep. 23; *Donnersberger v. Prendergast*, 128 Ill. 229, 21 N. E. 1; *Kennedy v. Le Moyne*, 188 Ill. 255, 58 N. E. 903; *State v. Pierce*, 51 Kan. 241, 32 Pac. 924; *Eaton v. Walker*, 76 Mich. 579, 43 N. W. 638, 6 L. R. A. 102; *Trumble v. Trumble*, 37 Neb. 840, 55 N. W. 869; *State v. Bowen*, 54 Neb. 211, 74 N. W. 615; *Mack v. State*, 60 N. J. L. 28, 36 Atl. 1088; *Parfitt v. Ferguson*, 3 App. Div. 176, 38 N. Y. S. 466; *Crowther v. Fidelity Ins. Trust & Safe Dep. Co.*, 85 Fed. 41, 29 C. C. A. 1; *Walling v. Dickertown*, 64 N. J. L. 203, 44 Atl. 864; *Astor v. Arcade Ry. Co.*, 113 N. Y. 93, 20 N. E. 594, 2 L. R. A. 782.

⁷⁸ *Andrews v. Ada County*, 7 Idaho, 453, 63 Pac. 592.

⁷⁹ *Alberson v. Mayor*, 82 Ga. 30, 8 S. E. 869; *Citizens' St. R. R. Co. v.*

In such case the reference to the date may be treated as surplusage. A slight variance in reciting the title of the act amended will be immaterial, if the act intended is clearly identified.⁸⁰ But where the variance was calculated to mislead as to the nature of the amendment, it was held fatal.⁸¹ An act entitled an act to amend section 1733 of chapter XI of title XI of the criminal code of Oregon was held good, although there was no such chapter or title, there being but one section with the number given.⁸² The title and body of an amendatory act described the section to be amended by a number given to it in an unofficial compilation in common use. The intent of the legislature was held to be plain and effect was given to the act, so that while the title and act purported to amend section 202 of article 8 of a specified statute, they were given effect as an amendment of section 1 of article 8.⁸³ An act was entitled "An act to amend section 4 of act No. 282 of the local acts of 1877, entitled," etc. Act No. 282 was an act to revise the charter of Grand Rapids and was divided into ten titles, each of which had a section 4. It was held that the title referred to the first section 4 and was sufficient for the purpose.⁸⁴ But "An act to amend chapter 9 of the penal code of the state of Montana" was held void for uncertainty, there being several chapters having that number.⁸⁵ An act to amend "sections 1770 and 1782 inclusive of," etc., was held to include the intermediate sections, the same as though all the numbers had been given in detail.⁸⁶

Haugh, 142 Ind. 254, 41 N. E. 583;
American Surety Co. v. Great
White Spirit Co., 58 N. J. L. 526, 43
Atl. 579.

⁸⁰ Northern Pac. Exp. Co. v. Met-
schan, 90 Fed. 80, 32 C. C. A. 530.

⁸¹ Sanders v. Cambria County, 4
Pa. Dist. Ct. 241. See Mankin v.
Pennsylvania Co. (Ind.), 67 N. E.
229.

⁸² State v. Robinson, 32 Ore. 43,
48 Pac. 857.

⁸³ Otis v. People, 196 Ill. 542, 63
N. E. 1058. See *post*, § 141.

⁸⁴ Stow v. Grand Rapids, 79 Mich.
595, 44 N. W. 1047.

⁸⁵ State v. Mitchell, 17 Mont. 67,
42 Pac. 100. And see Hearn v.
Louttit, 42 Ore. 572, 72 Pac. 132.

⁸⁶ State v. Long, 21 Mont. 26, 52
Pac. 645.

§ 139. Effect of title specifying the section or sections to be amended.— Where the title of the amendatory act specifies the section or sections to be amended, the weight of authority is that the amendments must be germane to the subject-matter of the sections specified,⁸⁷ and that amendments of other sections, not specified, will be void.⁸⁸ In Michigan, in such cases, the specification of the sections is treated as surplusage, and, under a title to amend a particular section or sections of an act, it is held that the whole law is open to amendment.⁸⁹ It is held in some states that under a title

⁸⁷ *Ex parte Cowert*, 93 Ala. 94, 9 So. 225; *Newman v. State*, 101 Ga. 584, 28 S. E. 1005; *State v. Am. Sugar Ref. Co.*, 106 La. 553, 31 So. 181; *Horkey v. Kendall*, 53 Neb. 522, 73 N. W. 953, 68 Am. St. Rep. 623; *State v. Cornell*, 54 Neb. 72, 74 N. W. 432; *Weis v. Ashley*, 59 Neb. 494, 81 N. W. 318, 80 Am. St. Rep. 704; *Armstrong v. Mayer*, 60 Neb. 423, 83 N. W. 401; *State v. Eskew*, 64 Neb. 600, 90 N. W. 629; *Omaha v. Union Pac. Ry. Co.*, 73 Fed. 1013, 20 C. C. A. 219, 36 U. S. App. 615.

⁸⁸ *State v. Courtney*, 27 Mont. 378, 71 Pac. 308; *Horkey v. Kendall*, 53 Neb. 522, 73 N. W. 953, 68 Am. St. Rep. 623; *Ex parte Hewlett*, 22 Nev. 333, 40 Pac. 96.

⁸⁹ *Attorney-General v. Bolger*, 128 Mich. 355, 87 N. W. 366; *Common Council v. Schmid*, 128 Mich. 379, 87 N. W. 383, 92 Am. St. Rep. 468. And see *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841. The constitution of Michigan forbids the introduction of new bills after the first fifty days of the session. In the second case cited a bill was introduced during the first fifty days to amend section 2 of chapter 4 of the charter of Detroit. This

charter consisted of 37 chapters and 693 sections. After the fifty days there was substituted and passed a bill to amend sections 1, 2 and 13 of chapter 2 and sections 1 and 25 of chapter 4 of the same charter. The act was held valid on the ground that under the title of the first bill any amendment whatever could be made to the charter. Moon, J., in a dissenting opinion, says: "According to the contention of respondents, under a title to amend by number the most insignificant provision of a city charter, and one about which the average citizen may care nothing, every section of the charter is open to amendment. His right to choose his own officers may, as in this case, be taken from him for one, two, or more years; the bonded limit of the city may be raised; the tax limit may be raised; new boards organized; and in fact all his substantial rights as a citizen of the municipality may be seriously affected. To make the matter, if possible, more illogical, a designing legislator might introduce a bill to amend section 2 of chapter 25, which refers to the establishment of a boulevard, and

to amend specified sections a new section cannot be added,⁹⁰ even though the matter of the new section is germane to the sections amended and might have been enacted as an amendment to one of the sections.⁹¹ But in Indiana it is held that under such a title new sections may be added which are germane to the subject expressed in the title of the original act.⁹² Where the section is specified, matter cannot be introduced by way of amendment to such section which is provided for elsewhere in the act. Thus an act to amend sections 10, 12 and 14 of an act in regard to licensing occupations brought into these sections by amendment licenses for the business of refining sugar and molasses, which was provided for in section 11 of the original act. This was held to be void, as not within the title, and the court says: "When this act was passed the general public and each person pursuing any of the businesses mentioned therein were advised of the exact situation and placed in a position to take steps to thereafter maintain, alter or repeal the act as the different interests might be affected. The general public and each individual concerned was called upon to watch subsequent legislation concerning licenses. If the title of a proposed law should give notice of an intention to amend or repeal generally the preceding act, every interest involved should be placed upon the alert and warned of a possible injurious change in the law. If, however, the title of the proposed law should give notice of an intention simply to amend a particular section of the bill, then all parties other than those interested in the subject-matter contained in that particular section would be thrown off their guard, and, being led to believe they had no interest in the new statute, would take no steps looking to their own protection. If, under the title to a bill to amend simply

introduce in the body of the act provisions abolishing the recorder's court, amending the law in regard to sewers, etc." p. 401.

v. Aspen Min. & C. Co., 3 Colo. App. 223, 32 Pac. 717.

⁹¹ Shepherd v. Shepherd, 4 Kan. App. 546, 45 Pac. 658.

⁹⁰ State v. Southern Ry. Co., 115 Ala. 250, 22 So. 589; County Com'rs

⁹² Lewis v. State, 148 Ind. 346, 47 N. E. 675.

section 1 of a given law, which section affects only specified persons, or deals with a particular subject, distinct matters which are contained in and specially provided for in another section, and which concerned different sets of persons, could, after being dealt with differently from what they were in their proper section, be transferred over and inserted into 'section 1,' as so altered, the parties concerned in this change might be greatly deceived and ruined without their knowledge."⁹³ A contrary view is taken in Kentucky.⁹⁴

Where the title of the amendatory act indicates a purpose to amend generally, that is, where the title is to amend a specified act, giving the title, it is no objection that a particular amendment is not germane to the section amended, if it is within the title of the original act.⁹⁵ An act to amend several sections of a code, which are cognate or related to each other, is not open to the objection that it embraces a plurality of subjects.⁹⁶ An act to amend sections 1770 and 1782 inclusive was held to include the intermediate sections.⁹⁷

§ 140. Effect of title indicating the amendments to be made — Whether a limitation.— Where the title of the amendatory act recites the title of the act to be amended and also specifies the amendments to be made, the legisla-

⁹³ *State v. Am. Sugar Ref. Co.*, 106 La. 553, 564, 81 So. 181. To same effect: *Ex parte Reynolds*, 87 Ala. 138, 6 So. 835.

⁹⁴ *Hoskins v. Crabtree*, 108 Ky. 117, 44 S. W. 434, 82 Am. St. Rep. 576. In this case the title was, "An act to amend and re-enact article three of an act entitled 'An act relating to and entitled husband and wife,' approved May 16, 1893." This act changed the rights of the wife in the deceased husband's property. This matter was already provided for in a statute on descent and distribution. It was held that the

legislation in question was proper under either title, and the act was sustained.

⁹⁵ *State v. Cornell*, 54 Neb. 72, 74 N. W. 432; *State v. Madson*, 43 Minn. 438, 45 N. W. 856.

⁹⁶ *Hotchkiss v. Marion*, 12 Mont. 218, 29 Pac. 821; *State v. Brown*, 41 La. Ann. 771, 6 So. 638; *Commonwealth v. Brown*, 91 Va. 762, 21 S. E. 357. And see *Lewis v. Dunne*, 134 Cal. 291, 66 Pac. 478, 86 Am. St. Rep. 257, 55 L. R. A. 833; *Trumble v. Trumble*, 37 Neb. 840, 55 N. W. 869.

⁹⁷ *State v. Long*, 21 Mont. 26, 52 Pac. 645.

sure is limited to the amendments specified, and anything outside of these is void.⁹⁸ An act was entitled "A supplement to an act entitled 'An act to incorporate the Union Passenger Railway Co.,' approved April 8, 1864, *authorizing said company to extend their track.*" The act authorized the extension and also undertook to relieve the company from paving any street that had never been previously paved. The latter was held not within the title and the court says: "The act of 1865, being entitled a supplement to the act of 1864 incorporating the railway company, gave notice of its general purpose, but when the title went on to declare that it was a supplement 'authorizing said company to extend their track,' it limited the notice to that particular feature of the company's charter, and diverted attention from the matters included in the second paragraph."⁹⁹

§ 141. Whether title specifying section is sufficient, without giving title or subject of act amended — Reference to codes and compilations, official and otherwise.— It is held by the great majority of cases that it is sufficient for the title of an act to amend a code or revision, to specify the section to be amended, without giving the title of the chapter or division to which it belongs or in any way indicating the subject-matter of the section. Under such a title any legislation is proper which is germane to the section specified.¹ Such titles as the following have been ap-

⁹⁸ Niles v. Steere, 102 Mich. 328, 60 N. W. 771; Davey v. Ruffel, 162 Pa. St. 443, 29 Atl. 894; Abernathy v. Mitchell, 113 Ga. 127, 38 S. E. 303; Corscadden v. Haswell, 88 App. Div. 158; Moore v. Moore, 23 Pa. Supr. Ct. 73.

⁹⁹ Philadelphia v. Market Co., 161 Pa. St. 522, 527, 29 Atl. 286. Compare English & Scottish Am. Mort. Co. v. Hardy, 93 Tex. 289, 55 S. W. 169; Citizens' Savings Bank v. Auditor-General, 123 Mich. 511, 82 N. W. 214.

¹ Mobile & Girard R. R. Co. v. Commissioners' Court, 97 Ala. 105, 11 So. 732; People v. Parvin, 74 Cal. 549, 16 Pac. 490; Clay v. Central R. & B. Co., 84 Ga. 345, 10 S. E. 967; Foster v. State, 99 Ga. 56, 25 S. E. 613; State v. Brown, 41 La. Ann. 771, 6 So. 638; State v. Read, 49 La. Ann. 1535, 22 So. 761; Garrison v. Hill, 81 Md. 551, 32 Atl. 191; Iowa Savings & Loan Ass'n v. Curtis, 107 Iowa, 504, 78 N. W. 208; Ross v. Aguirre, 191 U. S. 60; State v. Scott, 32 Wash. 279; Beatrice v.

proved: "An act to amend section 1950 of the code of Tennessee;"² "An act to amend section 58, chapter 45 of the code of West Virginia;"³ "An act to amend and re-enact section 910 of the Revised Statutes of 1870."⁴ In the case last referred to the court says: "The manifest and sole object of the act being to amend and re-enact section 910 of the Revised Statutes, it is difficult to conceive of a more efficient mode of expressing that intention than the language used in the title of the act now under consideration. To require a more extended expression of the object intended would certainly not add clearness to the title, but would, on the contrary, incumber it, and destroy the unity of the expression which is contemplated by the requirement of the constitution on this subject."

So a section of an act may be amended under a title referring to the number given the section in a private but authorized compilation of statutes.⁵ Thus, one William Lair Hill was authorized to make such a compilation of the laws

Masslich, 108 Fed. 743, 47 C. C. A. 657; *State v. Olsen*, 58 Minn. 1, 59 N. W. 634; *Eaton v. Guaranty Co.*, 11 N. D. 79, 88 N. W. 1029; *Hearn v. Louttit*, 42 Ore. 572, 72 Pac. 132; *Utley v. Cavender*, 31 S. C. 282, 9 S. E. 957; *Hardaway v. Lilly* (Tenn.), 48 S. W. 712; *Nichols v. State*, 32 Tex. Crim. Rep. 391, 23 S. W. 680; *English & Scottish Am. Mort. Co. v. Hardy*, 98 Tex. 289, 55 S. W. 169; *Tabor v. State*, 34 Tex. Crim. Rep. 631, 31 S. W. 662, 53 Am. St. Rep. 726; *Heath v. Johnson*, 36 W. Va. 782, 15 S. E. 980; *McCalla v. Bane*, 45 Fed. 828; *In re Moore*, 81 Fed. 856; *Steele Co. v. Erskine*, 98 Fed. 215, 39 C. C. A. 178. But a title which does not designate any act, code or revision is incomplete. *Gunter v. Texas Land & Mortg. Co.*, 82 Tex. 496, 17 S. W. 840.

²*Hardaway v. Lilly* (Tenn.), 48 S. W. 712.

³*Heath v. Johnson*, 36 W. Va. 782, 15 S. E. 980.

⁴*State v. Brown*, 41 La. Ann. 771, 6 So. 638.

⁵*Otis v. People*, 196 Ill. 542, 63 N. E. 1053; *Hall v. Leland*, 64 Minn. 71, 66 N. W. 202; *Ex parte Howe*, 26 Ore. 181, 37 Pac. 536; *Hearn v. Louttit*, 42 Ore. 572, 72 Pac. 132. In the first case cited the court says: "But, while the General Statutes of 1878 are a mere compilation, yet by the mass of people, as well as the legislature, they have been generally looked upon and treated as original enactments. Our session laws are full of amendatory statutes whose titles refer to them, and never once allude to the original acts. Public policy and necessity, if nothing else, require us to hold

of Oregon. He did so, and the printed volume was entitled on the back, "Hill's Annotated Laws of Oregon." An act was entitled, "An act to amend section 2465 of Hill's Annotated Laws of Oregon." This section was section 8 of "An act in relation to county treasurers." The above title of the amendatory act was held sufficient.⁶ In the same state there existed a code of civil procedure and a code of criminal procedure, both of which were incorporated with other laws in Hill's compilation, in which the sections were numbered consecutively from the beginning to the end of the compilation. An act was passed entitled "An act to amend section 711 of the Codes and General Laws of Oregon." There was such a section in each of the codes as well as in Hill's compilation, but there was no code, compilation or revision entitled "The Codes and General Laws of Oregon." The amendment was germane to section 711 of Hill's compilation, but the court held the act void because there was no collection or compilation of statutes entitled as in the act. The court, while affirming the rule stated at the beginning of this section, adds: "But we do not feel justified in extending the rule, and holding that any reference from which it may be conjectured or argued that a certain section of a certain law or compilation was intended will answer."⁷

In Indiana and New York such titles are held to be insufficient. Thus, "An act supplementary to chapter 489 of the laws of 1868" was held to express no subject whatever.⁸ So of an act entitled "An act to amend section 640 of the Revised Statutes of 1881."⁹ The supreme court of Washington territory ruled the same way,¹⁰ but the supreme court

that the title to an act purporting to amend any part of such compilation is sufficient, as it would be, if, instead of being a compilation, it was original legislation."

⁶ *Ex parte Howe*, 26 Ore. 181, 37 Pac. 536.

⁷ *Hearn v. Louttit*, 42 Ore. 572, 72 Pac. 132.

⁸ *New York v. Manhattan Ry. Co.*, 143 N. Y. 1, 37 N. E. 494. To same effect: *People v. Hills*, 85 N. Y. 449.

⁹ *O'Mara v. Wabash R. R. Co.*, 150 Ind. 648, 50 N. E. 821. Also *Boring v. State*, 141 Ind. 640, 41 N. E. 270.

¹⁰ *Harland v. Territory*, 3 Wash. Ter. 131, 18 Pac. 458; *Rumsey v.*

of the state at first held otherwise,¹¹ though still applying the old rule to territorial acts,¹² but in a late case has reverted to the earlier doctrine.¹³ Of course all difficulty is avoided if the title of the amendatory act recites the title of the chapter to which the section belongs, or otherwise indicates its subject-matter.¹⁴ The title of a repealing statute is sufficient which designates the sections only.¹⁵

§ 142. Title of amendatory acts — Illustrations and miscellaneous cases.— An act entitled to amend the charter of a named municipal corporation may contain a provision changing the territorial boundary of the municipality.¹⁶ Under such a title provisions have sometimes been enacted curing defects in and validating municipal proceedings taken of course subsequent to the enactment of the original charter. Such provisions are germane to the object of the incorporation, but not to the function or act of creating a corporation, prescribing and distributing its powers, and regulating their exercise. Such curative pro-

Territory, 3 Wash. Ter. 382, 21 Pac. 152.

¹¹ *Marston v. Humes*, 3 Wash. 267, 28 Pac. 520.

¹² *State v. Halbert*, 14 Wash. 806, 44 Pac. 538; *Ponoin v. Furth*, 15 Wash. 201, 46 Pac. 241.

¹³ *State v. Superior Court*, 28 Wash. 317, 68 Pac. 957, 92 Am. St. Rep. 831. The court says in this case: "What is the significance of the word 'subject' in this connection? Webster defines it as 'that of which anything is affirmed or predicated; the theme of a proposition or discourse; that which is spoken of.' To say that mere reference to a numbered section embodies the idea of a theme, proposition or discourse, it seems to us, is not sustained by the ordinary understanding of those terms. The theme of a legislative act is that

of which it treats, and an amending act treats of the theme covered by the act sought to be amended. We therefore see no escape from the conclusion that the title of an amending act must contain some words which indicate the theme or proposition of which the act sought to be amended treats."

¹⁴ *Heller v. People*, 2 Colo. App. 459, 31 Pac. 773; *In re White*, 33 Neb. 812, 51 N. W. 287; *Commonwealth v. Brown*, 91 Va. 762, 21 S. E. 357.

¹⁵ *State v. Garrett*, 29 La. Ann. 637.

¹⁶ *Whiting v. Mt. Pleasant*, 11 Iowa, 482; *Morford v. Unger*, 8 Iowa, 82; *Swift v. Newport*, 7 Bush, 37; *Humbolt County v. County Com'rs*, 6 Nev. 30; *Roby v. Shepard*, 42 W. Va. 286, 26 S. E. 278.

visions are retrospective, and are not of the nature of a charter,¹⁷ while the original act is constitutive and wholly prospective.¹⁸ An act was entitled "An act to amend the charter of the town of Bessemer, and to reincorporate the same as the city of Bessemer, and to establish a charter therefor." There was no act to incorporate the town of Bessemer. It was held that the words as to amendment should be treated as surplusage and that the act was valid as an original and substantive piece of legislation.¹⁹ The charter of Mankato, Minn., made no provision for a municipal court. Later an act was passed to establish such a court. It was held that under a title to amend the charter of the city legislation dealing with the municipal court was void.²⁰ But in another case it was held that an independent act, which in reality was amendatory of a private charter, could be dealt with under a title to amend the charter.²¹ A supplement to an act concerning inns and taverns made it a misdemeanor to sell intoxicating liquors from any *ambulatory conveyance*; held not within the title.²² An act, which by its title relates to certain counties, cannot be amended under the same title so as to relate to other counties.²³ Where the title is to amend chapter 147, an amendment of chapter 117 is void.²⁴ So where the title is to amend certain sections, and the enactment merely repeals those sections.²⁵ Where the object is to amend both the

¹⁷ *Parfitt v. Ferguson*, 3 App. Div. 176, 38 N. Y. S. 466. See *post*, § 675.

¹⁸ *Williamson v. Keokuk*, 44 Iowa, 88; *In re Kiernan*, 6 T. & C. 320; *State v. Newark*, 34 N. J. L. 236, and *Humbolt Co. v. County Com'rs*, 6 Nev. 30, are liable to criticism for embracing provisions which are not strictly cognate with the purpose of the act as stated in the title. See *Dolese v. Pierce*, 124 Ill. 140, 16 N. E. 218.

¹⁹ *Judson v. Bessemer*, 87 Ala. 240, 6 So. 267.

²⁰ *State v. Porter*, 53 Minn. 279, 55 N. W. 134.

²¹ *Cassell v. Lexington, etc. Turnpike Co.*, 10 Ky. L. R. 486, 9 S. W. 502, 701.

²² *Mack v. State*, 60 N. J. L. 28, 36 Atl. 1088.

²³ *Farson v. South Brook*, 54 Minn. 117, 55 N. W. 864.

²⁴ *State v. Looker*, 54 Kan. 227, 38 Pac. 288.

²⁵ *Callahan v. Jennings*, 16 Colo. 471, 27 Pac. 1055. *Vice versa*, sections cannot be amended under a

title and body of an act, the title of the amendatory act should set forth the nature of the amendment to the title, otherwise there is nothing in the title to give notice of what may be expected by way of amendment to the law. Chapter 257 of the general laws of Minnesota of 1899 was an act "to prevent the use of chemical agents as preservatives in milk, cream, cheese and butter." In 1901, under a title "to amend the title and section 1 of chapter 257, general laws of 1899," there was added to the title of the original act the words, "or food products of any nature whatever," and the body of the act was extended accordingly. The act was held void because the title was insufficient to indicate the wide extension of the provisions of the act.²⁶ Where the title purported that an act was a supplement to a supplement, it was held that it must be germane to the latter, and that it was not enough that it was germane to the original act.²⁷

§ 143 (98). **Whether an act embraces a plurality of subjects.**—Similar subjects may be grouped and treated as a class for general legislation, embracing all or a part. There is evident in the later constitutions a strong preference for such legislation, and against special, where general acts are appropriate and practicable. Generalizations to answer all cognate wants require preparation and reflection. A particular need first attracts the attention of the legislator, and when he proceeds to frame a measure with reference to it, how comprehensive he will make it depends on his leisure, his courage, his capacity and his public spirit. There is a marked difference between an act treating of individual subjects as such, and embracing more than one, and an act which aims at a single purpose involving a plurality of subjects, and concerning all of them or several of them. The

title to repeal them. *Trumble v. Ry. Co. v. Montclair*, 47 N. J. Eq. 591, 21 Atl. 493. *Trumble*, 37 Neb. 340, 55 N. W. 869.

²⁶ *State v. Rumberg*, 96 Minn. 399, 90 N. W. 1055, 1133.
²⁷ *New York & Greenwood Lake Ry. Co. v. Montclair*, 47 N. J. Eq. 591, 21 Atl. 493.

former is generally multifarious;²⁸ the latter valid as dealing with a unity. One general law may provide how all municipal corporations may be organized, how all private corporations may be formed; but one act to create two corporations is void for duplicity.²⁹ One act may define all the crimes, or all belonging to one class;³⁰ but one act which creates two separate offenses deals with two subjects.³¹ The multiplicity of persons or things which will be affected by the legislation is immaterial if the subject be single. An act authorizing two counties to issue bonds to erect a court-house in each was held to embrace but one subject—that of building court-houses.³² Such an act might properly embrace all counties. That it is not so general, and only applies to two, does not affect this question. It may have been as extensive as the occasion in the state required. But where the legislation concerns separate things without unity in any consideration or purpose, it is within the constitutional inhibition. Thus a law provided for the expenditure of certain highway taxes on two distinct state roads, and for the location and construction of a third state road, and for the expenditure of certain other taxes upon that; it was held to embrace more than one subject. The three roads were held to be “three distinct objects of legislation,” which might with entire propriety have been provided for by separate acts; and, indeed, ought to have been, in view of the care which is taken by the constitution to compel each distinct object of legislation to be considered separately.³³

²⁸ In re Paul, 94 N. Y. 497; State v. Harrison, 11 La. Ann. 722.

²⁹ King v. Banks, 61 Ga. 20; Ex parte Connor, 51 id. 571.

³⁰ State v. Brassfield, 81 Mo. 162, 51 Am. Rep. 234.

³¹ In re Paul, 94 N. Y. 497.

³² Allen v. Tison, 50 Ga. 374; Weyand v. Stover, 35 Kan. 545.

³³ People v. Denahy, 20 Mich. 349. Cooley, J., delivering the opinion of

the court, said: “*These objects have certainly no necessary connection, and, being grouped together in one bill, legislators are not only precluded from expressing by their votes their opinion upon each separately, but they are so united as to unite a combination of interest among the friends of each in order to secure the success of all, when, perhaps, neither could be passed*”

In *Daubman v. Smith*³⁴ the act was entitled "to transfer the charge and keeping of the jails and the custody of the prisoners in the counties of Essex and Hudson from the sheriff to the board of chosen freeholders, and for the employment of prisoners, and to regulate the term of service therein." Magie, J., said, in delivering the opinion of the court: "I am compelled to the conclusion that the legislation in question is in obvious opposition to the constitutional provision in one or the other of its phases. For, if the object of this act may be taken to be the regulation of the jails and the custody of the prisoners in the two counties named in the first eight sections, then the ninth section, in providing for the extension of the scheme to

separately. The evils of that species of omnibus legislation which the constitution designed to prohibit are all invited by acts thus framed; and although we have no reason to suppose that those evils actually existed in the present case, or that there was any purpose on the part of the legislature to disregard the constitutional requirement, yet we cannot be governed by these considerations, if the act is of a class which is actually prohibited.

"The act, it will be seen, is not one which establishes a general system for the expenditure of non-resident highway taxes, or for the construction of state roads. It singles out two state roads and provides for the expenditure of certain non-resident highway taxes upon each. It then proceeds to provide for the location and construction of a third state road and the expenditure of certain other taxes upon that.

"The three objects are as separate and distinct as the three great lines of railroad crossing the state,

and the same arguments which might be advanced in support of this act would support also an act which would single out those three railroads for special and peculiar legislation in respect to which the roads have no necessary connection. A combination of that description would at once be pronounced unconstitutional by general consent, but would not differ at all, in principle, from the present act, in which the combination of objects is equally apparent, and equally unnecessary for the proper purpose of legislation. The only difference there could be in the two cases would be that, in a case of a combination of interests among powerful corporations to secure favorable legislation on their behalf, a purpose to evade the constitutional requirement would generally be very apparent, while in this case we do not imagine it to have existed at all; but the question of violation of the constitution is not a question of intent."

³⁴ 47 N. J. L. 200.

other counties, introduces another and different object, and the act embraces more than one object.³⁵

"If, on the other hand, the object of this act may be taken to be the regulation of the jails and then of the prisoners in all the counties of the state, then that object is not expressed in the title. If such was the object of the act, the fact that with respect to some counties it was mandatory, and with respect to others optional, might not be objectionable. The matters comprehended in the act would seem to be germane to such an object. But the title does not express such an object." The act had more scope than the title, and the excess was so much as applied to a county not named in the title.

The following acts were held to embrace but one subject, the basis for the claim of duplicity being indicated by italics: An act for the formation of corporations for *manufacturing* and *mercantile* purposes;³⁶ an act for the preservation of *fish* and *game*;³⁷ an act *to acquire rights of fishing* common to all in the fresh water lakes in certain counties, *to acquire lands* adjoining thereto for public use and enjoyment in connection therewith and *to regulate the same*, and *providing for county lake and park boards*, etc.;³⁸ an act to provide for the collection of taxes *heretofore* and *hereafter* levied;³⁹ an act *fixing the number of directors* in public school boards in certain cities, and *providing for the election of such directors*, and *for districting* said cities therefor;⁴⁰ an act providing for the deposit in banks of *state and county funds* by county treasurers;⁴¹ an act to protect *hotel, inn and boarding-house keepers*;⁴² an act fixing the time for the opening and closing of *saloons* and *gaming houses*;⁴³ an act to authorize and regulate the business

³⁵ In re Sackett, etc. Sta., 74 N. Y. 95.

³⁶ Jenking v. Osman, 79 Mich. 305, 44 N. W. 787.

³⁷ Ah King v. Police Court, 139 Cal. 718, 73 Pac. 587.

³⁸ Albright v. Sussex Co. Lake and Park Commission, 68 N. J. L. 523, 53 Atl. 612.

³⁹ Aplin v. Stiles, 83 Mich. 460, 47 N. W. 241.

⁴⁰ State v. Miller, 100 Mo. 439, 13 S. W. 677.

⁴¹ Hopkins v. Scott, 88 Neb. 661, 57 N. W. 391.

⁴² State v. Yardley, 95 Tenn. 546, 32 S. W. 481, 34 L. R. A. 656.

⁴³ Ex parte Livingston, 20 Nev. 282, 21 Pac. 822.

of commercial agencies, credit companies, and guaranty associations;⁴⁴ an act creating the office of county controller, transferring to that officer the duties of county auditor and abolishing the latter office;⁴⁵ an act to regulate the jurisdiction, duties and compensation of justices of the peace and constables;⁴⁶ an act which legalizes proceedings for a local improvement and provides for a re-assessment;⁴⁷ an act to amend both the *title* and the *body* of an act.⁴⁸ Where it had long been the policy of the state to work convicts on the public roads, an act relating to the public roads of counties and the management of county workhouses was held to embrace but one subject.⁴⁹ An amendatory act in relation to railroads provided in substance as follows: *first*, it made it the duty of the railway companies of the state to remove or destroy all dead or dry vegetation and undergrowth upon the right of way, and enforced this duty by an appropriate penalty; *second*, it subjected any railroad company that failed to construct ditches and drains to carry off the surface water obstructed by its road-bed to a penalty of five hundred dollars, and gave to the land-owner a right of action against the company for all damages caused by such failure. The act was held to embrace but one subject, the protection of land and crops in proximity to railroads from damage by fire and water caused by the construction and operation of the road.⁵⁰ An act to amend certain sections, repeal certain sections and to add new sections to a chapter of the code entitled "Oysters," was held to embrace but one subject.⁵¹ And generally

⁴⁴ State v. Morgan, 2 S. D. 32, 48 N. W. 314.

⁴⁵ Lloyd v. Smith, 176 Pa. St. 213, 35 Atl. 199.

⁴⁶ Herbert v. Baltimore County, 97 Md. 639.

⁴⁷ Richman v. Supervisors, 77 Iowa, 513, 42 N. W. 422, 14 Am. St. Rep. 808, 4 L. R. A. 445; In re Piedmont Ave. East, 59 Minn. 522, 61 N. W. 678.

⁴⁸ Dyker Meadow L. & I. Co. v. Cook, 3 App. Div. 164, 38 N. Y. S. 222.

⁴⁹ Condon v. Maloney, 108 Tenn. 82, 65 S. W. 871.

⁵⁰ Cox v. Hannibal & St. Jo. R. Co., 174 Mo. 588, 74 S. W. 854.

⁵¹ Commonwealth v. Brown, 91 Va. 762, 21 S. E. 857.

an amendatory act is not open to the charge of duplicity because it makes two or more amendments, if the sections amended relate to a common subject.⁵²

It is difficult to lay down a general rule on the subject of practical utility. The supreme court of Minnesota says: "To constitute duplicity of subject, an act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other. All that is necessary is that the act should embrace some one general subject; and by this is meant merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."⁵³ And the supreme court of Indiana gives the following rule: "The proper test in all questions of this sort is, does the body of the particular legislation embrace more than one general subject, and such matters as are calculated to assist in reaching the single object intended, and is that subject *disclosed* by the title? If thus tested it appears that an act embraces but one subject and matters properly connected therewith, and that that subject is *shown* by the title, it must be held to be constitutional; otherwise not."⁵⁴

⁵² State v. Brown, 41 La. Ann. 771, 6 So. 638; Hotchkiss v. Marion, 12 Mont. 218, 29 Pac. 821.

⁵³ Johnson v. Harrison, 47 Minn. 575, 578, 50 N. W. 923, 28 Am. St. Rep. 382.

⁵⁴ Isenhour v. State, 157 Ind. 517, 62 N. E. 40, 87 Am. St. Rep. 228.

The following are additional cases in which the question was considered and the acts involved held to embrace but one subject: State v. Street, 117 Ala. 203, 23 So. 807; Hawkins v. Roberts, 123 Ala. 130, 27 So. 827; Mitchell v. State, 134

Ala. 392, 32 So. 687; Vincenheller v. Reagan, 69 Ark. 460, 64 S.W. 278; Ex parte Pfirrmann, 134 Cal. 143, 66 Pac. 205; Reed v. McCrary, 94 Ga. 487, 21 S. E. 232; State v. Sanders, 42 Kan. 228, 21 Pac. 1073; Jockheck v. Shawnee Co. Com'rs, 53 Kan. 780, 37 Pac. 621; Ash v. Thorp, 65 Kan. 60, 68 Pac. 1067; Edwards v. Police Jury, 89 La. Ann. 855, 2 So. 804; Baltimore v. Keeley Institute, 81 Md. 106, 31 Atl. 437, 27 L. R. A. 646; Bissell v. Heath, 98 Mich. 472, 57 N. W. 585; McMorran v. Ladies of the Maccabees, 117

§ 144 (103). **Effect of duplicity of subject in act or title.**—If an act embraces two or more subjects and two or more of the same are expressed in the title, the whole act is void.⁵⁶

In *State v. Lancaster Co.*,⁵⁶ Maxwell, J., said: "The rule is well settled that where the title to an act actually indicates, and the act itself actually includes, two distinct objects, where the constitution declares it shall embrace but one, the whole act must be treated as void, from the manifest impossibility of choosing between the two and holding the act valid as to one and void as to the other.⁵⁷ But this rule will apply only in those cases where it is impossible from an inspection of the act itself to determine which act, or rather which part of the act, is void and which is valid. Where this can be done the rule does not apply, unless it shall appear that the invalid portion was designed as inducement to pass the valid, so that the whole taken together will warrant the belief that the legislature would have passed the valid part alone." So if the body of an act embrace more than one subject, and only one be mentioned in the title, the whole act will be void, unless the subject mentioned

Mich. 898, 75 N. W. 943; *Newark v. Mt. Pleasant Cem. Co.*, 58 N. J. L. 168, 33 Atl. 396; *Rodebaugh v. Philadelphia Traction Co.*, 190 Pa. St. 358, 42 Atl. 953; *Commonwealth v. Charity Hospital*, 198 Pa. St. 270, 47 Atl. 980; *State v. Brown*, 103 Tenn. 449, 53 S. W. 727; *State v. Hoskins*, 106 Tenn. 480, 61 S. W. 781; *McMaster v. Advance Thresher Co.*, 10 Wash. 147, 38 Pac. 760; *State v. Hall*, 24 Wash. 255, 64 Pac. 153; *Geer v. Ouray Co. Com'rs*, 97 Fed. 435, 88 C. C. A. 250; *Mexican National R. R. Co. v. Jackson*, 118 Fed. 549, 55 C. C. A. 315. Many additional cases will be found in the following sections.

⁵⁵ *Ballentyne v. Wickersham*, 75

Ala. 539; *Builders' & Painters' Supply Co. v. Lucas*, 119 Ala. 202, 24 So. 416; *Pennington v. Woolfolk*, 79 Ky. 13; *Moore v. Police Jury*, 32 La. Ann. 1013; *State v. Ferguson*, 104 La. 249, 28 So. 917, 81 Am. St. Rep. 123; *State v. Atkins*, 104 La. 37, 28 So. 919; *Davis v. State*, 7 Md. 151; *Skinner v. Wilhelm*, 63 Mich. 568, 30 N. W. 311; *State v. Lancaster*, 17 Neb. 87; *Trumble v. Trumble*, 37 Neb. 840, 55 N. W. 869; *In re Commissioners*, 49 N. J. L. 488, 10 Atl. 363; *Johnston v. Spicer*, 107 N. Y. 185, 13 N. E. 753; *State v. McCann*, 4 Lea. 1; *Ragio v. State*, 86 Tenn. 272, 6 S. W. 401.

⁵⁶ 17 Neb. 87.

⁵⁷ *Cooley's Const. Lim.* 147.

in the title is so independently treated in the act as to be capable of separation from the other subject. This result must be the conclusion though the act be passed under a constitution like that of California, containing the condition added to the inhibitory clause in question.

∴ In *People v. Parks*,⁵⁸ McKee, J., thus characterizes the act in question, entitled an act "to promote drainage:" "It will thus be seen that the body and scope of the act included a combination of subjects; the construction of reservoirs for the storage of *debris* from mines; the protection of mines, towns or cities from inundation, by the erection of embankments or dykes; the drainage of certain districts of the state by the rectification of river channels, and the levy of special taxes to carry on a system of public works, are all inseparably conjoined in the body of the act. The extraordinary powers conferred upon the district board of directors are to be exercised for the benefit of all the subjects conjointly; and the money to be raised by the exercise of these powers is to be expended for all without distinction as to any particular ones, thus rendering it impossible to disjoin the subjects embraced in the act which are not expressed in its title so as to adjudge the one void and the other valid, as might be done under section 24 of article 4 of the constitution."⁵⁹

Where the provisions of a statute which are not connected with its subject are separable, they will be declared void and the residue sustained.⁶⁰ In states where this con-

⁵⁸ 58 Cal. 624, 638.

⁵⁹ See *State v. Exnicios*, 33 La. Ann. 253; *State v. Crowley*, 33 La. Ann. 782.

⁶⁰ *Post*, ch. IX; *State v. Dalon*, 35 La. Ann. 1141; *Cooley's C. L.* 181; *People v. Briggs*, 50 N. Y. 566, 568; *Succession of Irwin*, 33 La. Ann. 63; *State v. Exnicios*, 33 La. Ann. 253; *Unity v. Burrage*, 103 U. S. 447, 26 L. Ed. 405; *State v. Young*,

47 Ind. 150; *Shoemaker v. Smith*, 37 Ind. 122; *Richards v. Richards*, 76 N. Y. 188; *Ex parte Wood*, 34 Kan. 645; *Dorsey's Appeal*, 72 Pa. St. 192; *Commonwealth v. Martin*, 107 Pa. St. 185; *Stuart v. Kinsella*, 14 Minn. 524; *State v. Lancaster Co.*, 17 Neb. 87; *Smith v. Mayor*, 34 How. Pr. 508; *Allegheny Co. Home's Case*, 77 Pa. St. 77; *Adams v. Webster*, 26 La. Ann. 142; *State*

stitutional restriction applies only to local and private acts, the joinder of provisions of a public or general nature with those of a local or private nature will not invalidate the former, though the latter may be void for duplicity of subjects in the act or for not being germane to the title.⁶¹

§ 145 (102). Provisions in an act not within the subject expressed in the title — Examples.— The title of an act defines its scope; it can contain no valid provision beyond the range of the subject there stated.⁶² It has already been

v. Baum, 33 La. Ann. 981; Williamson v. Keokuk, 44 Iowa, 88; State v. Hurds, 19 Neb. 316; Whited v. Lewis, 25 La. Ann. 568; People v. Hall, 8 Colo. 485, 9 Pac. 34; Fuqua v. Mullen, 13 Bush, 467; Municipality No. 3 v. Michoud, 6 La. Ann. 605; Ex parte Moore, 62 Ala. 471; Mississippi & R. River B. Co. v. Prince, 10 Am. & Eng. Corp. Cas. 391; Ex parte Thomason, 16 Neb. 238; Davis v. State, 7 Md. 151; State v. Wardens, 23 La. Ann. 720; State v. Silver, 9 Nev. 227; Gibson v. Belcher, 1 Bush, 145; Stockle v. Silsbee, 41 Mich. 616; People v. Fleming, 7 Colo. 230, 8 Pac. 70; Bugher v. Prescott, 23 Fed. 20; Rader v. Township of Union, 39 N. J. L. 509; Daubman v. Smith, 47 N. J. L. 200; Grubbs v. State, 24 Ind. 295; Rushing v. Sebree, 12 Bush, 198; Central & G. R. R. Co. v. People, 5 Colo. 39.

⁶¹ People v. Supervisors, 43 N. Y. 10; Richards v. Richards, 76 N. Y. 186, 189; People v. McCann, 16 N. Y. 58, 69 Am. Dec. 642; Williams v. People, 24 N. Y. 405.

⁶² State v. Silver, 9 Nev. 227; People v. Common Council, 13 Abb. Pr. (N. S.) 121; Lowndes County v. Hunter, 49 Ala. 507; State v. War-

dens, 23 La. Ann. 720; Brieswick v. Mayor, etc., 51 Ga. 639, 21 Am. Rep. 240; Davis v. State, 7 Md. 115; In re Tappen, 36 How. Pr. 390; Ex parte Thomason, 16 Neb. 238, 20 N. W. 312; Mewherter v. Price, 11 Ind. 199; People v. Gadway, 61 Mich. 285, 28 N. W. 101, 1 Am. St. Rep. 578; Church v. Detroit, 64 Mich. 571, 31 N. W. 447; Nester v. Busch, 64 Mich. 657, 31 N. W. 572; Losch v. St. Charles, 65 Mich. 555, 32 N. W. 816; Supervisors v. Auditor-General, 68 Mich. 659, 36 N. W. 794; Ellis v. Hutchinson, 70 Mich. 154, 38 N. W. 14; Eaton v. Walker, 76 Mich. 579, 4 N. W. 638, 6 L. R. A. 102; Fidelity Ins. Co. v. Shenandoah V. R. R. Co., 86 Va. 1, 9 S. E. 759; Thomas v. Wabash, etc. R. R. Co., 40 Fed. 126; Touzalin v. Omaha, 25 Neb. 817, 41 N. W. 796; McCabe v. Kenney, 52 Hun, 514; Lane v. State, 49 N. J. L. 673; Hatfield v. Commonwealth, 120 Pa. St. 395, 14 Atl. 151; Wulftange v. McCollom, 88 Ky. 361; Norton Co. Com'rs v. Snow, 45 Kan. 332, 25 Pac. 903, 26 Pac. 60; State v. Sholl, 58 Kan. 507, 49 Pac. 668; People v. Congdon, 77 Mich. 351, 43 N. W. 986; State v. Washoe Co. Com'rs, 22 Nev. 399, 41 Pac. 145; Matter of Greene, 55 App. Div. 475, 67 N. Y. S.

shown that any provisions germane to the subject expressed, or which are reasonably related or incidental thereto, or which may aid or facilitate the accomplishment of the purpose expressed in the title, may be included in the act and will be covered by the title.⁶³ The supreme court of Wisconsin says: "When one reading a bill, with the full scope of the title thereof in mind, comes upon provisions which he could not reasonably have anticipated because of their being in no way suggested by the title in any reasonable view of it, they are not constitutionally covered thereby. But in applying that rule, this other rule, which has been universally adopted, must be kept in mind: The statement of a subject includes, by reasonable inference, all those things which will or may facilitate the accomplishment thereof."⁶⁴

A title importing a prospective statute will not cover a retrospective provision.⁶⁵ An act to prescribe the manner of creating corporations cannot constitutionally embrace provisions amending existing charters.⁶⁶ A title importing exclusively a public statute will not cover provisions of a private nature not mentioned in the title.⁶⁷ An act purporting by its title to legalize and make valid certain county bonds may not authorize the issue of new bonds for like reasons to other persons.⁶⁸ Provisions directing the manner of executing a judgment may not be embraced in an act professing by its title to regulate fees on judicial sales.⁶⁹ Under a title providing for work in the improvement of certain named streets in a city, no provisions can be enacted

291; *Commonwealth v. Moorhead*, 7 Pa. Co. Ct. 513.

⁶³ *Ante*, §§ 118, 130.

⁶⁴ *Diana Shooting Club v. Lameux*, 114 Wis. 44, 50, 89 N. W. 880, 90 Am. St. Rep. 833.

⁶⁵ *Lindsay v. U. S. Savings & Loan Ass'n*, 120 Ala. 156, 24 So. 171, 42 L. R. A. 788; *Thomas v. Collins*, 58 Mich. 64, 24 N. W. 558.

⁶⁶ *Ayeridge v. Town Com'rs*, 60 Ga. 405; *City Council v. Port Royal*, etc., 74 Ga. 658.

⁶⁷ *People v. Supervisors*, 43 N. Y. 10. But see *Neuendorff v. Duryea*, 69 N. Y. 557, 25 Am. Rep. 285.

⁶⁸ *Board of Commissioners v. Baker*, 80 Ind. 374.

⁶⁹ *Gaskin v. Anderson*, 55 Barb. 259.

for work on others not named.⁷⁰ A title confined to leasehold estates will not cover provisions relating to freeholds.⁷¹ So an act whose title refers only to revenue for state and county purposes cannot provide for municipal revenues.⁷² It has been made a question whether an act entitled to regulate the jurisdiction of a class of inferior courts and providing for an appeal could properly regulate the jurisdiction and practice of the appellate court in the cases so appealed. It appears to the writer to be an extraneous subject.⁷³

⁷⁰ In re Sackett, etc. Streets, 74 N. Y. 95.

⁷¹ Dorsey's Appeal, 72 Pa. St. 192.

⁷² Ross v. Davis, 97 Ind. 79; Bugher v. Prescott, 23 Fed. 20; Knoxville v. Lewis, 12 Lea, 180; Equitable Guaranty & Trust Co. v. Donahoe, 3 Penn. (Del.) 191, 49 Atl. 372.

⁷³ Jones v. Thompson, 12 Bush, 394; Faqua v. Mullen, 13 Bush, 467; Kuhns v. Krammis, 20 Ind. 490, overruled in Robinson v. Skipworth, 23 Ind. 311. The title of the act in question in this case was: "The election and qualification of justices of the peace and defining their jurisdiction, powers and duties in civil cases." The act contained a provision in regard to cases appealed from justices' courts to the circuit and common pleas courts, that "such cases shall stand for trial in the court of common pleas or circuit courts whenever such transcript has been filed ten days before the first day of the term thereof, and be there tried under the same rules and regulations prescribed for trials before justices; and amendments of the pleadings may be made on such

terms as to costs and continuances as the court may order." In Kuhns v. Krammis the court said: "Appeals from justices of the peace entirely remove the causes appealed from the justices. They are not tried upon error but *de novo*, and are never returned to the justices. The final judgment regulating the rights of the parties is rendered in the appellate court. Such being the case, all legislation touching the manner of rendering judgment in such cases should be in acts regulating proceedings in the appellate courts; and provisions in the justice's act assuming to prescribe the practice in the trial and judgment of such causes in the appellate courts is in no manner connected with the act regulating the practice in justice's court." "But," the court inquires in the overruling opinion in Robinson v. Skipworth, "is there not a natural and proper connection between this matter and the subject of the act? It is plain that to constitute this connection the matter need not form any part of the subject. For it is well said by Mr. Justice Perkins in delivering the

An act which by its title is directed against the adulteration of milk, and professing to regulate the sale of milk, does not extend to the provision against producing unwholesome milk by any other process than adulteration.⁷⁴ So, where the title of an act referred only to bills and promissory notes, no other contracts could be affected or made the subject of legislation in the body of the act.⁷⁵ A title of legislation relating to the transportation of freight will not permit any provision relative to passenger transportation.⁷⁶ Nor is a title providing for the acknowledgment of deeds and other conveyances of land broad enough to include provisions defining the consequences of a failure to record such instruments.⁷⁷ Under the phrase "to lay additional tracks," in the title of an act supplementary to the charter of a railway company, a new route cannot be substituted

opinion of this court in the case of *The Bank of the State of Indiana v. The City of New Albany*, 11 Ind. 139, that 'as to sec. 19, art. 4 (of the constitution), referred to, that "every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title." The title incorporating the bank is, "An act incorporating the bank without branches." We have already seen that the extent and manner of taxing the capital stock of the bank, when created, is a matter properly connected with the subject of chartering the institution, *and it is only the subject, and not the matter properly connected therewith, that must be expressed in the title.*' The chain connecting the matter of section 70 (*supra*) with the subject of the act is unbroken. We follow the case in all its stages, from the commencement of the action to

the final judgment of the justice; then follows the appeal; then the proceedings in the appellate court, step by step, to final judgment, including costs in the action." Here the cases on which the jurisdiction is exercised are treated as "matter properly connected therewith," even after they have passed beyond that jurisdiction. It is not the purpose of the act to provide for cases—they are connected with the subject of the act—the justice's jurisdiction—while they are subjects of that jurisdiction—no longer. They are incidents; and when they have passed out of the sphere of the principal, they are no longer connected with it in theory or practice.

⁷⁴ *Shivers v. Newton*, 45 N. J. L. 469.

⁷⁵ *Mewherter v. Price*, 11 Ind. 199.

⁷⁶ *Evans v. Memphis, etc. R. R. Co.*, 56 Ala. 246, 28 Am. Rep. 771.

⁷⁷ *Carr v. Thomas*, 18 Fla. 736.

for that established under the original charter.⁷⁸ An act confined by the title to "the preservation of the Muskegon river improvement" may include authority to collect tolls and expend the money for that object, but a provision for raising means to pay and authorizing payment for the original construction of the work is beyond the object expressed in the title.⁷⁹ An act "to secure complete records in the courts" does not warrant a provision for obtaining recovery from a delinquent officer who had been already paid for completing the record.⁸⁰ An act "to provide revenue by taxation of corporations, associations and limited partnerships" is too restricted to embrace individual taxation.⁸¹ Provisions for attaching unorganized territory to a judicial district cannot be enacted under a title to regulate the terms of court in it.⁸²

Where the title indicates legislation in regard to specified classes, or enumerated objects or places, provisions in regard to other classes, objects or places will be without the title and void.⁸³ A title relating to the *sale* of *liquors* will not cover provisions as to the giving away of liquors, or the sale of fruits put up in alcohol.⁸⁴ A title to prevent the *use* of a thing will not cover provisions as to selling or offering to sell it.⁸⁵ "An act to prohibit the use of billiard tables, bowling alleys, dice or card tables" also prohibited the use of "any other device by which men and boys are allured to

⁷⁸ West Phila. R. R. Co. v. Union R. R. Co., 9 Phila. 495.

⁷⁹ Ryerson v. Utley, 16 Mich. 269.

⁸⁰ Lowndes County v. Hunter, 49 Ala. 507.

⁸¹ Commonwealth v. Martin, 107 Pa. St. 185.

⁸² Ex parte Wood, 34 Kan. 645, 9 Pac. 758.

⁸³ Dixon v. Poe, 159 Ind. 492, 65 N. E. 518; State v. Hallock, 19 Nev. 384, 12 Pac. 832; Commonwealth v. Darlington, 8 Pa. Dist. Ct. 237; Northern Pac. Express Co. v. Met-

schan, 90 Fed. 80, 32 C. C. A. 530; Fidelity Ins. Trust & Safe Dep. Co. v. Shenandoah Valley R. R. Co., 86 Va. 1, 9 S. E. 759, 19 Am. St. Rep. 858; Fish v. Stockdale, 111 Mich. 46, 69 N. W. 92; State v. Borden, 164 Mo. 221, 64 S. W. 272; Bohmer v. Haffen, 161 N. Y. 390, 55 N. E. 1047.

⁸⁴ Hancock v. State, 114 Ga. 439, 40 S. E. 317.

⁸⁵ State v. Great Western Coffee & Tea Co., 171 Mo. 634, 71 S. W. 1011.

vice and idleness." The latter was held not to be within the title.⁸⁶ A title was, "An act making it a misdemeanor to issue trading stamps and other devices;" provisions in the act as to distributing such stamps and devices were held void.⁸⁷ A title to prohibit the sale of *spirituous* liquors will not cover provisions as to other liquors.⁸⁸ A title to prohibit the issuing of licenses to sell liquor within certain territory was held not to cover a provision forbidding the sale of liquor in the same territory.⁸⁹ Where the title is to prohibit barbering on Sunday, a provision making it a misdemeanor for a barber to keep open his bath room on Sunday is void.⁹⁰ An act was entitled "An act to provide for the assessment and collection of revenue." A provision imposing a fine upon state and county treasurers for loaning or using the public funds was held not within the title.⁹¹ A title to provide for licenses to stevedores does not cover a provision requiring them to give bond.⁹²

§ 146. Acts incorporating or relating to railroads and common carriers.— "An act to revise the laws providing for the incorporation of railroad companies, and to regulate the running and management, and to fix the duties and liabilities of all railroad and other corporations owning and operating any railroad in this state," covers but one object. It is to bring together the legislation concerning the creation and management of railroads.⁹³ An act to incorporate a railroad or other like company may, besides granting its corporate powers, confer on townships or municipalities

⁸⁶ Commonwealth v. Ayers, 17 Pa. Supr. Ct. 852.

⁸⁷ State v. Walker, 105 La. 492, 29 So. 973.

⁸⁸ Elliott v. State, 91 Ga. 694, 17 S. E. 1004.

⁸⁹ Hatfield v. Commonwealth, 120 Pa. St. 395, 14 Atl. 151; Commonwealth v. Frantz, 185 Pa. St. 389, 19 Atl. 1025; Commonwealth v. Montross, 8 Pa. Supr. Ct. 237.

⁹⁰ Ragio v. State, 86 Tenn. 272, 6 S. W. 401.

⁹¹ In re Breene, 14 Colo. 401, 24 Pac. 3.

⁹² Steenken v. State, 88 Md. 708, 42 Atl. 212.

⁹³ Toledo, etc. R. R. Co. v. Dunlap, 47 Mich. 456, 11 N. W. 271; Continental Improvement Co. v. Phelps, 47 Mich. 299, 11 N. W. 167.

through which its road passes, or which otherwise derive a public advantage from the enterprise and improvement of such company, power to subscribe to the capital stock of, or make donations to, the company; and it may provide for elections to decide as to such subscriptions or donations; for taxation to pay such subscriptions or donations, if voted; and for the issue of bonds to represent the same.⁹⁴ It may also provide for the personal liability of stockholders for labor.⁹⁵ But a provision in a railroad charter that certain counties might subscribe to the capital stock of the company all or any part of any sums theretofore voted in aid of a certain other railroad, was held not within the title.⁹⁶ An act to amend a railroad charter authorized the company to obtain and any city or village to grant to the company any rights, privileges and franchises it might choose to do and secured such grants against revocation, change, injury or impairment. The authority was held not within the title.⁹⁷

⁹⁴ *Mahomet v. Quackenbush*, 117 U. S. 508, 6 S. C. Rep. 858, 29 L. Ed. 982; *Town of Abington v. Cabeen*, 106 Ill. 200, 12 Am. & Eng. R. R. Cas. 581; *Connor v. Green Pond, etc. R. R. Co.*, 23 S. C. 427; *Board of Super. v. People*, 25 Ill. 181; *Bellville R. R. Co. v. Gregory*, 15 id. 20, 18 Am. Dec. 589; *Fireman's Benefit Ass'n v. Lounsbury*, 21 Ill. 511, 74 Am. Dec. 115; *People v. Loewenthal*, 93 Ill. 191; *City of Virden v. Allan*, 107 id. 505; *Slack v. Jacob*, 8 W. Va. 640; *Hope v. Gainsville*, 72 Ga. 246; *Unity v. Burrage*, 103 U. S. 447, 26 L. Ed. 405; *San Antonio v. Mehaffy*, 96 U. S. 812, 24 L. Ed. 816; *Binz v. Weber*, 81 Ill. 288; *People v. Brislin*, 80 Ill. 423; *Hutchinson v. Self*, 153 Ill. 542, 89 N. E. 27; *Powell v. Supervisors*, 88 Va. 707, 14 S. E. 543.

⁹⁵ *Shipley v. Terre Haute*, 74 Ind. 297.

⁹⁶ *People v. Hamill*, 134 Ill. 666, 17 N. E. 799, 29 N. E. 280.

⁹⁷ *Mobile v. Louisville & N. R. R. Co.*, 124 Ala. 132, 26 So. 902. The court says: "If it be conceded that the subject contained in the title to the amendatory act is the subject of the original act, which is sought to be amended, that is, the incorporation of the New Orleans, Mobile & Chattanooga Railroad Co., even then the matter expressed in section 5, conferring grants of power upon incorporated towns and cities, could not be referable and cognate to the subject expressed in the caption, so as to relieve it of its offensiveness to the constitutional provisions. To the legislative mind, or to the public, upon reading the title to the act in question there is not the slightest hint or suggestion to be had of an intention or purpose to amend,

A railroad charter authorized subscriptions to its stock by counties and townships and provided that "townships shall be and they are hereby declared to be bodies politic and corporate and vested with the necessary powers to carry out the provisions of this act." This was held sufficient to incorporate the townships and the provision was held germane to the subject expressed, because in aid of the object declared.⁹⁸ An act to provide for the incorporation of companies to operate passenger railways may properly contain authority to lease the property and franchises of other railroad companies.⁹⁹ A provision that no railway company shall have power to create a mortgage or lien valid against judgments for materials furnished, or for work done, or for damages done to persons or property by operation, was held germane to the subject of the consolidation of railways.¹ An act to provide for the organization of street railways contained a provision that all companies theretofore organized to operate street railways should have the same powers, rights, protection and privileges, and should be subject to all the liabilities provided for companies organized under the act.² The court says: "It is germane and appropriate to the subject-matter of the act, and to enact under such a title that all companies of a like nature should have the same privileges is fairly within the general object described in the title."³ Under a title to extend a certain railway, a provision authorizing the company to charge not exceeding four cents per mile was held germane and valid.⁴ The title, "An act requiring railroad companies to pay for damages to stock," was held sufficient to cover provisions as to fence-

alter or change the chartered powers of the cities and villages along the line or at the termini of the railroad of the company incorporated by the act."

⁹⁸ *Floyd v. Perrin*, 30 S. C. 1, 8 S. E. 14, 2 L. J. A. 242.

⁹⁹ *Frankerton v. Penn Traction Co.*, 193 Pa. St. 229, 44 Atl. 289.

¹ *Frasier v. Railway Co.*, 88 Tenn. 138, 12 S. W. 537.

² *Detroit v. Detroit Citizens' St. Ry. Co.*, 184 U. S. 368, 22 S. C. Rep. 410, 46 L. Ed. 592.

³ *Id.*, p. 393.

⁴ *Parker v. Elmira, etc. R. R. Co.*, 165 N. Y. 274, 59 N. E. 81.

ing track.⁵ "An act to compel railroad companies to fence their roads by and through lands inclosed with a lawful fence," covers a provision that, if the company fails to comply, the owner may build the fence and collect the cost, with an attorney's fee.⁶ Acts to regulate railroads and common carriers may contain all suitable provisions for making the regulations effective.⁷ In an act to regulate the sale of tickets, rates of fare, and the taxes and licenses to be paid by street railway companies, a provision forbidding passengers to get on or off the front platform, and requiring cars to be so equipped as to prevent the practice, was held foreign to the title.⁸ In an act to regulate the charges for the transportation of passengers and freight by railroads, a provision imposing a penalty for evading the payment of fare is germane.⁹

An act to provide for the organization of a railroad terminal corporation provided that railroad companies contracting with it might guarantee its bonds and contracts and also subscribe for, hold and dispose of its stock and bonds. The provision was held valid.¹⁰ A Michigan act was entitled "An act to authorize the incorporation of companies for the construction of union railroad stations and depots, with the necessary connecting tracks and the management of same." The act authorized such companies to lay tracks and do a suburban passenger business. The provision was held to be within the title.¹¹

⁵ *Snook v. Clark*, 20 Mont. 230, 50 Pac. 718.

⁶ *Missouri Pac. Ry. Co. v. Harrelson*, 44 Kan. 253, 24 Pac. 465.

⁷ *State v. Jacksonville Terminal Co.*, 41 Fla. 363, 27 So. 221; *State v. Bernheim*, 19 Mont. 512, 49 Pac. 441; *State v. Whitaker*, 160 Mo. 59, 60 S. W. 1068.

⁸ *Wetzman v. Southern Ry. Co.*, 131 Mo. 612, 33 S. W. 181.

⁹ *Gieseke v. San Joaquin*, 109 Cal. 489, 42 Pac. 446.

¹⁰ *Ryan v. Terminal Co.*, 102 Tenn. 111, 50 S. W. 744, 45 L. R. A. 303.

¹¹ *Fort St. Union Depot Co. v. Morton*, 83 Mich. 265, 47 N. W. 228.

The following is all that is said on the point: "And the building of these tracks in connection with the depot, and the running of trains upon them, are all a part of the same general object, as the construction of the depots and station houses of the company, to wit, the increasing the facilities and

§ 147. Acts creating, regulating or otherwise relating to corporations in general.— Any definite subject is generally capable of almost infinite arbitrary division; many particular or subordinate subjects may be included in one general subject,¹² and each of these particular or subordinate subjects may be selected for the subject of the bill, and may itself be divisible and may embrace other particular or subordinate subjects. Acts to create corporations contain general subjects capable of much division; they are not confined to the mere creation of a corporate entity. Such an act defines the powers of the corporate body and regulates their exercise, and may include everything necessary to insure the existence of the company, to attain the objects of its creation and to carry on the business of the company.¹³ An act to prescribe the manner of organizing corporations, public or private, is prospective, and provides the mode of creating new corporations. In such an act provision to modify the charter of an existing corporation is a new subject, not germane to the title.¹⁴ An act so entitled will operate to govern the incorporation of all subsequent companies; it is not multifarious on that account, but an act which in terms incorporates several companies is so.¹⁵ A charter to create an institution for the education of young men presents a subject which embraces everything which is designed to facilitate that object; everything intended and adapted to promote the well-being of the institution or its students.¹⁶ An act to establish a house of refuge for the correction and reformation of juvenile offenders may include an appropriation, not only of money, but land with directions for its

comforts of travel and transportation of passengers and freight." p. 271.

¹² *People v. Briggs*, 50 N. Y. 553, 562.

¹³ *State v. Wirt Co. Ct.*, 37 W. Va. 808, 17 S. E. 379.

¹⁴ *Ayeridge v. Town Commission-*

ers, 60 Ga. 405; *City Council v. Port Royal*, 74 Ga. 658. See *State v. Clinton*, 27 La. Ann. 40.

¹⁵ *King v. Banks*, 61 Ga. 20; *Ex parte Conner*, 51 id. 571.

¹⁶ *O'Leary v. County of Cook*, 28 Ill. 534.

sale.¹⁷ An act incorporating a bank may provide that all parties liable on any bill negotiated at the bank may be sued in one action.¹⁸ An act for the benefit of a turnpike company may authorize it to borrow money and to execute mortgages to secure its payment; to sell the road, right of way, etc., applying the proceeds to the payment of its debts; may authorize a judicial sale at the instance of creditors, giving the purchaser the rights and powers of the company.¹⁹ An act to establish state depositories and prescribe their duties and liabilities will cover provisions requiring a bond, and regulating the enforcement of it in case of default.²⁰ An act "to authorize the Utica Water-Works Company to increase its capital stock, and to contract with the common council of a city named for a supply of water in that city for the extinguishment of fires," was held to embrace but one subject, namely, the giving of authority to two corporate bodies therein named to enter into a contract for the purpose therein specified. The power to increase the capital of the company was given simply to enable it to raise such sums of money as might be necessary for a performance of its contract; it was a mere incident to the main object.²¹ Provision for the individual liability of stockholders,²² or making directors and officers liable for the debts of the corporation, for failure to file reports, or for making a false report or certificate,²³ are germane to the subject of creating corporations. "An act to provide for the organization and government of state banks," may prohibit the

¹⁷ McCaslin v. State, 44 Ind. 155;
Klein v. Kinkead, 16 Nev. 194.

¹⁸ Davis v. Bank of Fulton, 31 Ga.
69.

¹⁹ Louisville, etc. Co. v. Ballard, 2
Met. (Ky.) 165.

²⁰ Seay v. Bank of Rome, 66 Ga.
609. See Wardle v. Townsend, 75
Mich. 385, 42 N. W. 950, 4 L. R. A.
515.

²¹ Utica Water-works Co. v.
Utica, 31 Hun, 426; O'Meara v.
Commissioners, 3 T. & C. 236.

²² Ripley v. Evans, 87 Mich. 217,
49 N. W. 504.

²³ Ludington v. Heilman, 9 Colo.
App. 548, 49 Pac. 877; Tabor v.
Commercial Nat. Bank, 62 Fed.
388, 10 C. C. A. 429, 27 U. S. App.
111.

business of banking except by corporations organized under the act.²⁴

Acts of incorporation may thus contain provisions affecting the rights, powers and duties of other persons and corporations. An act to incorporate a board of underwriters may impose a tax on the premiums of both members and non-members.²⁵ An act to incorporate a navigation company may authorize other companies to subscribe for its stock.²⁶ An act for the incorporation of manufacturing corporations may not include corporations to do a mercantile business.²⁷ An act regulating the liability of railroads and other corporations, known as the employers' liability act, abolished the defense of fellow-servant and prohibited contracts releasing the company in advance from liability for injuries, and these were held germane to the title.²⁸ An act relating to life and casualty insurance may provide that money and benefits due from such companies shall be exempt from garnishment and execution.²⁹ An act requiring certain insurance companies to file annual reports with the auditor of state does not cover a provision authorizing the auditor to make a detailed examination into the business and affairs of such companies, whenever he deems it for the interest of the policy-holders to do so.³⁰ An act concerning the judicial sale of the property and franchises of corporations may provide that the purchaser at such sale, and his associates, shall constitute a corporation with all the powers and privileges of the old corporation.³¹ An act concerning

²⁴ *State v. Woodmanse*, 1 N. D. L. Ry. Co. v. Montgomery, 152 Ind. 246, 46 N. W. 970, 11 L. R. A. 420. 1, 49 N. E. 582, 71 Am. St. Rep. 301.

²⁵ *New York Board of Fire Underwriters v. Whipple*, 2 App. Div. 361, 37 N. Y. S. 712. ²⁹ *Burton v. Snyder*, 22 Colo. 173, 43 Pac. 1004.

²⁶ *State v. Wirt Co. Ct.*, 37 W. Va. 808, 17 S. E. 379. ³⁰ *State v. Commercial Ins. Co.*, 158 Ind. 680, 64 N. E. 466.

²⁷ *Eaton v. Walker*, 76 Mich. 579, 43 N. W. 638, 6 L. R. A. 102. ³¹ *Brinkerhoff v. Newark, etc. Traction Co.*, 66 N. J. L. 478, 49 Atl. 812.

²⁸ *Pittsburgh, Cinn., Chi. & St.*

building and loan associations may apply to foreign companies.³² "An act to prohibit extortion and discrimination in the transmission of telegraph dispatches," provided that telegraph companies should be liable for the non-delivery of and mistakes in messages, and for all damages resulting from failure to perform any duty required by law, and should not be exempt from such liability by reason of anything contained in its printed blanks. These provisions were held to be germane.³³ An act to provide for extending the term of corporations, provided that any corporation might amend its articles so as to put them in any form which they might have had originally; held not within the title.³⁴ When the title purports to relate to *newly-incorporated* companies, provisions relating to prior companies are void.³⁵ An act to revise the charter of a company may legalize acts previously done,³⁶ but not those done under a prior void charter.³⁷ An act to provide for the accomplishment of a certain purpose may create a corporation for the purpose though not mentioned in the title.³⁸ An act to provide for the regulation and incorporation of insurance companies may not regulate the business of insurance by individuals.³⁹ An act to incorporate an educational body may not include the repeal of a charter of a similar corporation.⁴⁰ The title, "An act in relation to gas companies," was held sufficient to cover provisions permitting gas companies doing business in the same city, town or village to consolidate or merge in the manner provided in the act.⁴¹

³² Clarke v. Darr, 156 Ind. 692, 60 N. E. 688.

³³ Western Union Tel. Co. v. Lowery, 32 Neb. 732, 49 N. W. 707.

³⁴ Palmer v. Zumbrota, 72 Minn. 266, 75 N. W. 380.

³⁵ State v. The Schultz Co., 83 Md. 58, 34 Atl. 243.

³⁶ Smoot v. Peoples' Perpetual L. & B. Ass'n, 95 Va. 686, 29 S. E. 746, 41 L. R. A. 589.

³⁷ Snell v. Chicago, 183 Ill. 418, 24 N. E. 532, 8 L. R. A. 858.

³⁸ Astor v. Arcade Ry. Co., 118 N. Y. 93, 20 N. E. 594, 2 L. R. A. 789.

³⁹ Schenck v. State, 60 N. J. L. 881, 37 Atl. 724.

⁴⁰ Bryan v. Board of Education, 90 Ky. 322, 13 S. W. 276.

⁴¹ People v. Peoples' Gas Light & C. Co., 205 Ill. 482, 68 N. E. 950.

“An act to incorporate the Bloomingdale Grove Park Association” authorized the establishment of a fish and game preserve of thirty thousand acres in a particular county for the exclusive use of members and forbade trespassing or poaching under severe penalties. The title was held misleading and insufficient because it did not specify the county where the park was to be located and because the word “park,” in the American sense, means ground set apart for public use for recreation and pleasure.⁴²

§ 148. Acts to create municipal corporations or to revise, consolidate or amend their charters.—An act to incorporate a city may contain provisions relating to the various subjects upon which municipal legislation may be required for the preservation of the peace, the promotion of its growth and prosperity, and for the raising of revenue for its government.⁴³ It may confer the necessary legislative, taxing, judicial and police powers—the grant of them is one subject.⁴⁴ The whole thing, the creation of the municipality, is that subject; the parts of it are separate subjects, but parts of one general subject.⁴⁵ So an act to consolidate a city and provide for its government embraces but one subject. It may properly embrace the details for uniting different municipalities, providing for the payment of their debts, the government of the city, and all the minutia to which the general administration of its affairs would lead.⁴⁶ The revision of an act which has incorporated a municipality announces but one subject. It may treat of the essential parts of the whole as well as may the original creative enactment.⁴⁷ An act to revise and consolidate the several acts

⁴² *Commonwealth v. Hazen*, 207 Pa. St. 52, reversing S. C., 20 Pa. Supr. Ct. 487. 872; *People v. Pond*, 67 id. 98, 34 N. W. 647; *People v. Hurst*, 41 Mich. 328.

⁴³ *Louisiana v. Pilsbury*, 105 U. S. 278, 26 L. Ed. 1090; *City of Jacksonville v. Basnett*, 20 Fla. 525; *People v. Briggs*, 50 N. Y. 560.

⁴⁴ *Harris v. People*, 59 N. Y. 599; *Attorney-General v. Amos*, 60 Mich.

⁴⁵ *Id.*

⁴⁶ *Louisiana v. Pilsbury*, 105 U. S. 278, 26 L. Ed. 1090; *City of Covington v. Voskotter*, 80 Ky. 219; *State v. Haskell Co.*, 40 Kan. 65, 19 Pac. 362.

⁴⁷ *Harris v. People*, 59 N. Y. 602.

in relation to the charter of a city embraces but one subject. The charter consists of the creative act and all acts in force relating to the corporation. The word "consolidate" signifies that all the acts are to be brought into and re-enacted in one act. The subject is broad enough to embrace the details of the city government.⁴⁸ An act to make further provision for the government of a city or county is one to provide ways and means for its support, a revenue act, not one which can contain any provision to reorganize or change the government or its organic law.⁴⁹

When the title of an act indicates the general purpose to incorporate a municipal corporation, or to revise, consolidate or amend the charter of such a corporation, the following provisions have been held to be germane and within the title: authority to issue bonds in aid of a railroad;⁵⁰ provisions for adjusting the property rights and interests between the municipality created and the political division from which it was cut off;⁵¹ provision for a board of police commissioners, named by the governor and self-perpetuating;⁵² conferring the power of eminent domain for opening streets;⁵³ requiring street railways to pave a part of the streets which they occupy;⁵⁴ giving damages for re-grading streets;⁵⁵ that no one should acquire title to any street, lane, alley or public square by adverse possession;⁵⁶ authorizing the issue of bonds to construct a combination railroad and

⁴⁸ *People v. Briggs*, 50 N. Y. 560, 561.

⁴⁹ *Gaskin v. Meek*, 42 N. Y. 186; *People v. O'Brien*, 88 id. 193. This last case decides that there cannot be included in a revenue bill entitled to give authority to raise money by tax for the use of a city corporation, and regulating its disbursement, a provision amending the charter in relation to the official term of councilmen and the time of their election. See *Huber v. People*, 49 N. Y. 132.

⁵⁰ *Board of Trustees v. Maysville*, 97 Ky. 145, 30 S. W. 1.

⁵¹ *People v. Carson*, 10 Misc. 237, 30 N. Y. S. 817.

⁵² *Americus v. Perry*, 114 Ga. 871, 40 S. E. 1004.

⁵³ *State v. North Plainfield*, 63 N. J. L. 61, 42 Atl. 805.

⁵⁴ *Atlanta v. Gate City St. Ry. Co.*, 80 Ga. 276, 4 S. E. 269.

⁵⁵ *Sligh v. Grand Rapids*, 84 Mich. 497, 47 N. W. 1093.

⁵⁶ *Crawford v. Ross*, 126 Mich. 634, 86 N. W. 132.

wagon bridge across an abutting river;⁵⁷ providing that a court may revoke license of one convicted of violating an ordinance;⁵⁸ providing that the county treasurer shall pay over to the city treasurer the city taxes collected by him, with all interest and penalties and with its proportion of the interest paid by banks on moneys deposited by the county treasurer.⁵⁹

On the other hand, under similar titles, the following provisions were held not germane and void: That all funds arising under the general revenue laws of the state from liquor licenses issued to parties within the city should be paid over to the city treasurer for use of the public schools;⁶⁰ authority to make repairs on a toll road partly within the city and collect the cost by suit from the company;⁶¹ authority to build a county court-house and to issue bonds therefor;⁶² that the city should afford fire and police protection to the state property within its limits and care for the streets and walks on which state property abuts and that the expense should be paid out of the state treasury;⁶³ creating a police district, including the city and extending one and one-half miles beyond its limits;⁶⁴ providing for the election of a county assessor.⁶⁵

Such a title will cover provisions establishing a municipal court,⁶⁶ but will not justify the creation of a court for other than city purposes,⁶⁷ nor a provision forbidding the prosecution before a justice of the peace under a state law

⁵⁷ *South St. Paul v. Lamprecht Bros. Co.*, 88 Fed. 449, 31 C. C. A. 585.

⁵⁸ *State v. Anderson*, 63 Minn. 208, 65 N. W. 265.

⁵⁹ *Crookston v. County Com'rs*, 79 Minn. 283, 82 N. W. 586, 79 Am. St. Rep. 458.

⁶⁰ *Woolf v. Taylor*, 98 Ala. 254, 18 So. 688.

⁶¹ *Mt. Joy v. Turnpike Co.*, 182 Pa. St. 581, 38 Atl. 411.

⁶² *Thompson v. Luverne*, 128 Ala. 567, 29 So. 826.

⁶³ *Lansing v. Board of State Auditors*, 111 Mich. 327, 69 N. W. 723.

⁶⁴ *Blair v. State*, 90 Ga. 326, 17 S. E. 96, 35 Am. St. Rep. 206.

⁶⁵ *Haverly v. State*, 63 Neb. 83, 88 N. W. 171; *State v. Haverly*, 63 Neb. 87, 88 N. W. 172.

⁶⁶ *Clemmensen v. Petersen*, 35 Ore. 47, 56 Pac. 1015.

⁶⁷ *Ex parte Flagg*, 88 Tex. Crim. Rep. 573, 44 S. W. 294.

of a person who has already been arraigned before the mayor under an ordinance for the same offense;⁶⁸ nor a provision that the mayor and, in case of his disqualification, three members of the council, shall constitute a court for the trial of certain offenses within the city.⁶⁹

A general act for the incorporation of municipalities may make provision for the annexation of territory thereto.⁷⁰ It has been held in Kentucky that, under a title to amend the charter of a town, its limits may be extended,⁷¹ but the contrary has been held in Colorado.⁷² An act to incorporate a town may not change the county relations of its territory, though its territory is taken partly from each of two counties.⁷³ Where territory which had been constituted a county under a void act was created a township, under a title to create the township of Garfield, it was held that a provision attaching it to Finney county was valid.⁷⁴

Where the title is to re-incorporate a municipality or to amend its charter, it is held sufficient to cover provisions legalizing prior acts or proceedings.⁷⁵ "An act to alter and amend the several acts incorporating the town of S., and to confer upon said town of S. a municipal government," was held broad enough to cover provisions changing the town to a city, the word "municipal" being ambiguous and sufficient to cover either town or city government.⁷⁶ "An act to amend the charter of the city of St. Paul in relation to the duties and powers of the board of public works of said

⁶⁸ *Bell v. State*, 115 Ala. 87, 22 So. 453.

⁶⁹ *Brown v. State*, 79 Ga. 324, 4 So. 861.

⁷⁰ *In re Lackawana Tp.*, 160 Pa. St. 494, 28 Atl. 927.

⁷¹ *Parkland v. Gaines*, 88 Ky. 562, 11 S. W. 649.

⁷² *Denver v. Coulehan*, 20 Colo. 471, 39 Pac. 425, 27 L. R. A. 751.

⁷³ *Cahoon v. Iron Gate L. & L. Co.*, 92 Va. 367, 23 S. E. 767.

⁷⁴ *State v. Lewwelling*, 51 Kan. 562, 33 Pac. 425.

⁷⁵ *People v. Sutphin*, 166 N. Y. 163, 59 N. E. 770; *Nottage v. Portland*, 85 Ore. 539, 58 Pac. 883, 76 Am. St. Rep. 513. Compare *Matter of City of Rochester*, 77 App. Div. 28, 79 N. Y. S. 236; *Percival v. Cowychee, etc. Dist.*, 15 Wash. 480, 46 Pac. 1035.

⁷⁶ *Sessions v. State*, 115 Ga. 18, 41 S. E. 259.

city" did not name the board of public works in the body of the act, but related to local improvements over which that board had control and supervision. The act was held valid.⁷⁷ An act to provide for the creation of the city of P., now known as the provincial municipality of P., provided that the city should have control of wharves, and should appoint a harbor commissioner, with certain duties, and a harbor-master, who should perform all the duties then performed by the harbor-master under the statutes of the state. The existing harbor-master was thus displaced and the laws relating to his office materially changed. It was held that the title was misleading and the provisions in question were void.⁷⁸ "An act to incorporate the city of Lakeside, to provide for its future annexation to the city of Duluth and to the independent school district of Duluth," in its first eleven chapters incorporated certain territory as the city of L., and provided for its government, and in chapter 12 provided that on a certain date, a year and a half later, the city should become a part of the city of Duluth. The act was held to embrace but one subject and to be valid.⁷⁹

⁷⁷ *Ek v. St. Paul Permanent Loan Co.*, 84 Minn. 245, 87 N. W. 844.

⁷⁸ *State v. Burns*, 38 Fla. 367, 21 So. 290; *State v. Slocum*, 88 Fla. 407, 21 So. 1028. In the former case the court says that in an act to create an original municipality such a provision would have been proper, but that the words "now known," etc., are restrictive and indicate an intent to deal with the existing municipality and were misleading. "The title," says the court, "with the clause in it is calculated to divert attention from any proposition to subject the harbor-master of the port of Pensacola to municipal control, in that it directed attention to the creation of a city, then known as

the provisional municipality of Pensacola, which in no way controlled the appointment of the harbor-master." p. 390.

⁷⁹ *State v. La Vaque*, 47 Minn. 106, 49 N. W. 525. The court says: "Taking the entire act together, it is, in substance, only an act providing for the government of the territory described in it; providing for its government temporarily under the provision of an independent charter, and for its government after the period specified, under the provisions of the charter of Duluth, with two or three unimportant exceptions — exceptions that might have been made had the territory been originally

In an act to provide for the organization, government and powers of cities of the second class, a provision exempting such cities from liability for the neglect of street railroads to keep their tracks in repair was held not germane and void.⁸⁰ So of a provision limiting the time in which to bring suits against the city.⁸¹ An act to revise and amend the general law in relation to cities, towns and villages contained a provision for the creation of park districts, which might extend beyond the municipal limits, and which were to be managed and controlled by park boards. The provision was held not within the title. The court says: "While the subject of public parks is intimately connected with that of municipal government, and might properly form part of a statute regulating city, town and village charters, yet we are of opinion that the creation of such park corporations, in taxing districts embracing territory beyond the limits of any city, town or village, invested with some of the most important powers of the county and city government, as contemplated by the sections under review, is a subject which cannot fairly be construed as embraced within the title, 'Of cities, towns and villages.'"⁸²

§ 149. Acts relating to light, water, railroads, etc., in municipalities.—A title to authorize cities to erect and operate a lighting plant is sufficient to cover provision for commercial lighting.⁸³ "An act to provide for the establish-

included within the corporate limits of Duluth. Providing local government for that territory is the general subject, and the only general subject of the act. There are many minor subjects, matters of detail, in the act, as there must always be in similar acts; but, where such minor subjects are germane to the general subject, they are proper to be included in the act. Where the general subject is provision for the local government of a particular territory, provisions

for such government for a specified time, and different provisions for such government after that time, are equally appropriate to the general subject."

⁸⁰ *Weigel v. Hastings*, 29 Neb. 379, 45 N. W. 694.

⁸¹ *Foxworthy v. Hastings*, 28 Neb. 772, 87 N. W. 657.

⁸² *State v. County Court*, 102 Mo. 531, 15 S. W. 79.

⁸³ *Belding Land & Imp. Co. v. Belding*, 128 Mich. 79, 87 N. W. 113.

ment of an electric-light plant in H," may authorize the municipality to do it.⁸⁴ A title authorizing cities to obtain water by purchasing or constructing works was held insufficient to cover a provision for condemnation.⁸⁵ "An act providing for the sale of railroad and other franchises in *municipalities* and relating to granting franchises" may provide for the granting of franchises by county boards as well as by cities and towns.⁸⁶ "An act to establish and maintain a water department in and for the city of Syracuse" may embrace all provisions necessary for procuring a water supply.⁸⁷

§ 150. Acts relating to municipal streets, improvements, buildings, lands, etc.—An act authorizing cities and towns to construct internal improvements and issue bonds therefor was held to embrace provisions authorizing the purchase of works previously constructed.⁸⁸ "An act in relation to local improvements in the town of Flatbush," covers a provision authorizing the construction of an outlet sewer through an adjoining town to tide water, which was necessary to make the local sewers effective.⁸⁹ "An act to provide for a board of assessors in cities of the third class," may provide that such board shall make both the assessment for general taxes and the assessments of damages and benefits in case of local improvements.⁹⁰ An act to regulate the condemnation of property for various municipal purposes specified in the title, among which were "water mains," will not cover provisions authorizing condemnation for reservoirs and stand-pipes.⁹¹ Where the title was to provide for

⁸⁴ Mealey v. Hagerstown, 92 Md. 741, 48 Atl. 746.

⁸⁵ Enterprise v. Smith, 62 Kan. 815, 62 Pac. 324.

⁸⁶ Thompson v. Board of Sup'rs, 111 Cal. 553, 44 Pac. 230.

⁸⁷ Sweet v. Syracuse, 129 N. Y. 816, 27 N. E. 1081, 29 N. E. 289.

⁸⁸ Seymour v. Tacoma, 6 Wash. 138, 32 Pac. 1077.

⁸⁹ Van Brunt v. Flatbush, 128 N. Y. 50, 27 N. E. 978. To same effect, Newark v. Orange, 55 N. J. L. 514, 26 Atl. 799.

⁹⁰ In re Sewer Assessment for Passaic, 54 N. J. L. 156, 28 Atl. 517.

⁹¹ Adams v. San Angelo Water Works Co., 86 Tex. 485, 25 S. W. 605.

drainage and sewerage in densely populated townships where there was a public water supply, it was held the words "public water supply" covered water-works for public use, whether owned by the public or private parties, and that an act framed on that basis was valid.⁹² An act to authorize municipalities to acquire toll roads within their limits may authorize such toll-road companies to sell to such municipalities, but a provision authorizing them also to sell to any person or corporation would be without the title and void.⁹³ "An act authorizing the acquisition of turnpike roads and highways heretofore or hereafter constructed, near or through any borough or township, upon which tolls are charged," provided for the condemnation of any such road wholly within a county and imposed payment on the county; held, that the title was misleading as to the roads embraced, and deficient in not indicating the burden imposed upon the county.⁹⁴ "An act authorizing the inhabitants of townships to purchase and erect a building for township purposes," may provide that the inhabitants may delegate the authority to a township committee.⁹⁵ An act to authorize the erection of a poor-house may provide for filling vacancies in the office of poor directors.⁹⁶ An act to provide for the division of special assessments into instalments may provide for interest on the deferred instalments.⁹⁷

§ 151. Acts relating to the annexation and exclusion of territory to or from municipalities.— Where the title indicates the purpose to be to provide for the annexation of territory to municipalities, it is sufficient to cover a provision that the annexed territory shall not be taxed for the

⁹² *State v. Northampton Tp.*, 52 N. J. L. 496, 19 Atl. 975.

⁹³ *Tolley v. Courter*, 93 Mich. 469, 53 N. W. 620.

⁹⁴ *Little Equimunk, etc. Turnpike Co.*, 2 Pa. Co. Ct. 632; *Carbon-dale, etc. Road Co.*, 3 Pa. Co. Ct. 460.

⁹⁵ *Drew v. West Orange*, 64 N. J. L. 481, 45 Atl. 787.

⁹⁶ *Commonwealth v. Dickert*, 195 Pa. St. 234, 45 Atl. 1058.

⁹⁷ *McChesney v. Chicago*, 159 Ill. 223, 42 N. E. 894.

old debts of the municipality,⁹⁸ or provisions as to schools, where the boundaries of school districts are interfered with.⁹⁹ But where the title relates wholly to the union, division and changing the boundaries of townships, a provision that, when territory is annexed to a township which lies wholly within a city, the city shall extend over the annexed territory, is without the title and void.¹

§ 152. **Miscellaneous acts relating to municipal corporations.**—An act to create a board of police commissioners, and authorizing the appointment of a police force for the city of St. Louis, covers provisions for the appointment of private policemen, watchmen and detectives, and requiring them to have a license, and making it a misdemeanor for any to act in such capacity without a license.² An act to authorize a town to establish a board of health does not justify a provision that the expense of the board shall be chargeable to the county.³ The word “cities” in a title was held not to include towns.⁴ But the words “municipal corporations” were held to include township.⁵ An act to provide for the establishment of wards in cities may also provide for dividing the wards into election precincts.⁶ An act was entitled “An act relating to actions against cities, villages or boroughs for damages to persons injured on streets and other public grounds, by reason of the negligence of any public officer, agent or employee of any such city, village or borough.” The act covered injuries by reason of any defect in any “bridge, street, road, sidewalk,

⁹⁸ *Vernon School District v. Board of Education*, 125 Cal. 593, 58 Pac. 175.

⁹⁹ *McGurn v. Board of Education*, 133 Ill. 122, 24 N. E. 529.

¹ *Donnersberger v. Prendergast*, 128 Ill. 229, 21 N. E. 1.

² *State v. Bennett*, 102 Mo. 356, 14 S. W. 865.

³ *Quinn v. Cumberland Co.*, 162 Pa. St. 55, 29 Atl. 289.

⁴ *State v. Bedell*, 67 N. J. L. 148, 50 Atl. 364.

⁵ *Rathbone v. Hopper*, 57 Kan. 240, 45 Pac. 610, 84 L. R. A. 674; *West Plains Tp. v. Sage*, 69 Fed. 943, 16 C. C. A. 553, 32 U. S. App. 725.

⁶ *State v. Newark*, 57 N. J. L. 298, 30 Atl. 548.

park, public ground, ferry boat or public works of any kind." It was claimed that the words "other public grounds" in the title were to be construed by the rule *ejusdem generis*, and therefore to embrace only public places of like nature with public streets; but the court held that the rule should not be applied to defeat the act, and that the words were broad enough to include all the public buildings and places mentioned in the act.⁷ In the case cited a pumping station was held within the act and the title. "An act to disincorporate the city of Reno" provided for the enforcement and payment of claims against the city, and also for the government of its territory by the county board. These provisions were held to be within the title.⁸

§ 153. Acts relating to counties and county seats.—An act to provide for a uniform system of county government does not cover provisions for an official stenographer for the courts of the county, he not being a county officer and having nothing to do with the county government.⁹ "An act to provide for the creation and organization of new counties and government of the same" may make provision for the location of the county seat, the organization of towns and school districts therein, and the adjustment of indebtedness between the new and old counties.¹⁰ "An act to provide for the payment by new counties of their proportionate share of the indebtedness of the older counties from which they were taken" will cover provisions applying to counties created before the act was passed.¹¹ "An act to better define the boundary lines between" specified counties will not cover a provision taking territory from a county not named in the title and attaching it to one that is named.¹² Where the title is to attach K. county to F.

⁷ *Winters v. Duluth*, 82 Minn. 127, 84 N. W. 788.

⁸ *State v. Beck*, 25 Nev. 68, 56 Pac. 1068.

⁹ *Pratt v. Brown*, 135 Cal. 649, 67 Pac. 1082.

¹⁰ *State v. Board of Com'rs*, 67 Minn. 352, 69 N. W. 1083.

¹¹ *Mills County v. Brown County*, 87 Tex. 475, 29 S. W. 650.

¹² *State v. Baker*, 129 Mo. 482, 31 S. W. 924.

county, a provision attaching it to H. county is void.¹³ A title "to provide for the more economical management of county affairs" was held not sufficient to embrace provisions fixing the salaries of county officers or changing the compensation of justices of the peace.¹⁴ An act to authorize the voters of a county to vote on the removal of the county seat will not cover provisions for a partition of the old court-house and jail property owned jointly by the county and city.¹⁵

A title which purports to *authorize* counties to take certain steps and incur certain expense does not justify an act which *requires* them to do so.¹⁶ An act which creates an innovation in the management and control of county affairs should have its real purpose clearly indicated in the title.¹⁷ So of an act which authorizes other than the regular county authorities to create a county liability.¹⁸ An act for the creation of a new county may provide for the division of property and debts, and of taxes levied but not collected.¹⁹

§ 154. Acts relating to schools, school districts and education.—An act to dissolve school districts numbered 4, 35 and 108 and attach them to school district numbered 139, for the purpose of forming a graded school, was held to express but one subject, the forming of a graded school.²⁰

¹³ Atchison, T. & S. F. Ry. Co. v. Kearney Co., 58 Kan. 19, 48 Pac. 582.

¹⁴ Anderson v. Whatcom County, 15 Wash. 47, 45 Pac. 665, 83 L. R. A. 87.

¹⁵ Alexandria Co. Sup'rs v. Alexandria, 95 Va. 469, 28 S. E. 882. But an act to provide for the location, construction and maintenance of the University of Washington was held sufficient to cover a provision for the sale of an old site donated for university purposes. Callvert v. Winsor, 26 Wash. 368, 67 Pac. 91.

¹⁶ State v. Wabaunsee Co. Com'rs, 45 Kan. 731, 26 Pac. 483; Stegmaier v. Jones, 203 Pa. St. 47, 52 Atl. 56.

¹⁷ State v. County Com'rs, 47 Neb. 428, 66 N. W. 434; Stegmaier v. Jones, 203 Pa. St. 47, 52 Atl. 56.

¹⁸ Dailey v. Pelter County, 203 Pa. St. 598, 53 Atl. 498. Compare Read v. Clerfield County, 12 Pa. Supr. Ct. 419.

¹⁹ Kings County v. Johnson, 104 Cal. 198, 37 Pac. 870.

²⁰ Ash v. Thorp, 65 Kan. 60, 68 Pac. 1067. In Ackley School District v. Hall, 113 U. S. 185, 5 S. C. Rep. 371, 28 L. Ed. 954, was con-

Where the title related to the public schools of a city, provisions relating to districts partly within and partly without the city were held without the title.²¹ An act to enable the

considered an "Act to authorize independent school districts to borrow money and issue bonds therefor for the purpose of erecting and completing school-houses, legalizing bonds heretofore issued, and making school orders draw six per cent. interest in certain cases," which was held not in violation of the provisions of the state constitution (Iowa), that "every act shall embrace but one subject and matter properly connected therewith, which subject shall be expressed in the title."

The act is thus summarized in the opinion of the court:

"The act contains six sections, the fourth providing that 'all school orders shall draw six per cent. interest after having been presented to the treasurer of the district and not paid for want of funds, which fact shall be indorsed upon the order by the treasurer.' As there are two kinds of school districts in Iowa, 'district township' and 'independent district,'—the latter carved out of the former,—it is contended that the title to the act in question embraces two subjects: one relating to matters in which independent school districts alone are concerned, and the other to matters in which the township district and independent districts are concerned; that whether school orders, which may be issued for many purposes, by districts of either kind, should bear interest or not, is wholly foreign to

the borrowing of money to build school-houses in independent districts. Iowa Code, 1873, ch. 9, tit. 12.

"We are not referred to any adjudication by the supreme court of Iowa which supports the point here made. On the contrary the principles announced in *State v. County Judge*, 2 Iowa, 281, show that the act before us is not liable to the objection that its title embraces more than one subject. . . . The doctrines of that case have been approved by the same court in subsequent decisions, and they are decisive against the point here raised. *Morford v. Unger*, 8 Iowa, 83; *Davis v. Woolhough*, 9 id. 104; *People v. Brislin*, 70 Ill. 423; *McAurich v. Railroad Co.*, 20 Iowa, 342; *Farmers' Ins. Co. v. Highsmith*, 44 Iowa, 334. The general subject to which this special act relates is the system of common schools. That system is maintained through the instrumentality of district schools of different kinds. Provisions in respect to these instrumentalities—those referring to the erection and completion of school-houses in independent school districts with money raised upon negotiable bonds, and others, to the rate of interest which all school orders shall bear—relate to the same general object and are only steps towards its accomplishment."

²¹ *In re Consolidation of School Districts*, 23 Colo. 499, 48 Pac. 647.

school directors of the borough of C. to establish and maintain a graded school does not cover provisions annexing territory to the school district of C.²² An act to establish a school district was held insufficient to cover provisions forbidding the sale of liquors within the district and imposing penalties therefor.²³ An act to establish a text-book board for the public schools of C. county and to define its powers and duties provided for a uniform system of text-books to be selected by the board and made their use compulsory, and that books once selected should not be changed for six years. The claim was made that the words "text-book board" did not mean anything in particular and did not suggest the purpose of the act, but the court held the title sufficient.²⁴ "An act to provide for the support and maintenance of the University of Arkansas," abolished the office of pomologist connected with the university and made the various appropriations for its support. It was held to embrace but the one subject expressed in the title.²⁵ An act to provide a reform school for juvenile offenders may provide for committing such offenders thereto.²⁶

§ 155. Acts relating to offices and officers.—An act to create the office of county controller in certain counties and prescribing his duties, in effect abolished the office of county auditor existing in some of the counties. It was held that

²² *Payne v. School District*, 168 Pa. St. 386, 31 Atl. 1076.

²³ *Montgomery v. State*, 88 Ala. 141, 7 So. 51; *Glenn v. Lynn*, 89 Ala. 608, 7 So. 924.

²⁴ *State v. Griffin*, 132 Ala. 47, 31 So. 112.

²⁵ *Vincenheller v. Reagan*, 69 Ark. 460, 64 S. W. 278. The court says: "The object of the act in question was the maintenance and support of the university of the state. Anything which will lessen the illegal or unnecessary expenses of that institution will tend to its legitimate

maintenance. Economy and retrenchment, when the means are limited, are as necessary to the maintenance of the universities as it is of individuals. The abolition of the office of pomologist relieved the university of an expense, and in part of an unauthorized expense, and left it with a larger appropriation to accomplish the legitimate objects of one of its departments." p. 473.

²⁶ *Ex parte Liddell*, 93 Cal. 638, 29 Pac. 251.

this feature of the law was not expressed in the title.²⁷ By an existing act the affairs of M. county were managed by a board of three commissioners. An act was passed to repeal the former law and to provide for two commissioners to sit with the county judge for the transaction of county business. A provision legislating one commissioner out of office was held within the title.²⁸

An act to provide for the election of two justices of the peace for a city and to repeal an act providing for the election of four justices for the same city, continued two of the four existing justices and legislated two out of office. The title was held misleading and the act void.²⁹

"An act defining the duties of state controller" imposed penalties upon other officers for a failure to settle with the state controller as required by law; held not within the title.³⁰ An act to provide for the election of presidential electors may also provide for the election of alternates and for their service in case of vacancy.³¹ "All city officers" in a title may include the clerk of the city court, which, though really a state court, has always been provided for in acts relating to the city.³² An act to provide for the election or appointment of officers may provide for their qualifications or term of office.³³

An act to fix the fees and salaries of certain officers may contain provisions requiring such officers to account for all fees and to pay over a certain part to the county.³⁴ Such an act may provide for the recovery of fees illegally charged,³⁵

²⁷ Commonwealth v. Samuels, 163 Pa. St. 283, 29 Atl. 909; Commonwealth v. Severn, 164 Pa. St. 462, 30 Atl. 391.

²⁸ State v. Steele, 39 Ore. 419, 65 Pac. 515.

²⁹ Brooks v. Hydorn, 76 Mich. 273, 43 N. W. 1122.

³⁰ State v. Hoadley, 20 Nev. 317, 22 Pac. 99.

³¹ McPherson v. Blacker, 92 Mich. 377, 52 N. W. 469, 31 Am. St. Rep. 587, 16 L. R. A. 475.

³² Collins v. Russell, 107 Ga. 423, 33 S. E. 444.

³³ State v. Macklin, 41 Mo. App. 335; State v. Connelly, 66 N. J. L. 197, 48 Atl. 955, 88 Am. St. Rep. 469. The contrary is intimated in State v. Taylor, 21 Wash. 672, 59 Pac. 489.

³⁴ Hardy v. Kingman Co., 65 Kan. 111, 68 Pac. 1078.

³⁵ Benson v. Christian, 129 Ind. 535, 29 N. E. 26.

or impose a penalty for so doing.³⁶ So it may limit the number of their deputies and fix their compensation,³⁷ but may not create the office of deputy and fix the compensation attached thereto.³⁸ "An act fixing the salaries and compensation of the officers of Humboldt county and consolidating certain offices in that county," among other things, provided that the district attorney should be *ex officio* superintendent of schools and that the latter office should be consolidated with the former. The provision was held within the title.³⁹ So under the title to regulate the salary of an officer, it was held germane to prescribe his duties and to impose upon him the duties theretofore performed by another officer and in effect to abolish the latter office.⁴⁰ Where the title indicates that certain additional duties will be required of an officer and that he will be authorized to call in the assistance of private persons, it is sufficient to cover provisions for making compensation for such services.⁴¹ When the title expresses the purpose to be to *reduce* the compensation of certain officers, provisions which increase their compensation are void.⁴² "An act to fix the fees to be collected by the secretary of state for incorporation and certain other privileges," fixed fees for filing certificates of incorporation and provided that no corporation should exercise any corporate power or do any business in the state until the fee was paid. The provision was held germane.⁴³

"An act providing for the appointment of committees to investigate the affairs of state institutions and conduct of officers," provided for removal by the governor of officers

³⁶ *Lowe v. Bourbon Co.*, 6 Kan. App. 603, 51 Pac. 579.

³⁷ *Clark v. Finley*, 93 Tex. 171, 54 S. W. 348.

³⁸ *Milwaukee County v. Isenring*, 109 Wis. 9, 85 N. W. 131, 52 L. R. A. 635.

³⁹ *State v. Humboldt Co. Com'rs*, 21 Nev. 235, 29 Pac. 974.

⁴⁰ *Trehy v. Marye*, 100 Va. 40, 40 S. E. 126.

⁴¹ *Gunder v. Wyoming County*, 12 Pa. Dist. Ct. 78.

⁴² *Simard v. Sullivan*, 71 Minn. 517, 74 N. W. 280; *State v. Sullivan*, 72 Minn. 126, 75 N. W. 8.

⁴³ *Jones v. Aspen Hardware Co.*, 21 Colo. 263, 40 Pac. 457, 52 Am. St. Rep. 220, 29 L. R. A. 143.

found guilty of corruption, venality, inefficiency, misconduct, immorality or inattention to duty; held within title.⁴⁴

"An act creating the office of the state board of auditors and prescribing the duties thereof," provided that the secretary of state, state auditor and attorney-general should constitute the board and that they should examine the books and vouchers of the state treasurer at least twice a year, that the treasurer should deposit all funds in banks, to be designated by the board and governor, that such banks should give bond to be approved by the board and governor, and that the treasurer should not be liable for the loss of funds so deposited by the failure or act of the bank. It was held that the subject of the act was the security of state funds and that the subject was not expressed in the title.⁴⁵ An act to establish an office may provide how the election to the office may be contested and in what court.⁴⁶

§ 156. Acts relating to irrigation, drainage, levees, and the like.—An act "to regulate the use of water for irrigation, and providing for settling the priority of rights thereto, and for payment of the expenses thereof, and for payment of all costs and expenses incident to said regulations and use," is only equivalent to the briefer title which might have been adopted: An act to regulate the use of water for irrigation. This was held to be the controlling purpose of the law; that the rest of the title refers to nothing which is not germane to the subject thus expressed. Incidental to a proper regulation of the use of water diverted from

⁴⁴ *Rodgers v. Morrill*, 55 Kan. 787, 42 Pac. 355.

⁴⁵ *State v. Nomland*, 3 N. D. 427, 57 N. W. 85, 44 Am. St. Rep. 572.

⁴⁶ *State v. Slover*, 134 Mo. 10, 31 S. W. 1054, 34 S. W. 1102. Speaking of the title, the court says: "At once the suggestion comes as to the method of electing or appointing the incumbent, the length of his term, the salary or perquisites, the filling of the vacancy in case of

death or resignation, and nothing could be more natural than to look to the body of the act to ascertain what provision had been made to insure the orderly succession in the incumbency of the office, and to provide for settling the dispute of rival claimants thereto. Certainly such a provision as is found in section 16 would be germane to the subject and would have an obvious connection with it." pp. 17, 18.

natural streams in (Colorado) is a determination of the priorities of water rights.⁴⁷ An act to provide for water rights and irrigation may include provisions for condemning land for ditches for irrigation purposes.⁴⁸

“An act to provide for the establishment, construction and maintaining drains in this state,” is sufficient to cover all the provisions of a general drainage law, a drainage commission in each county, levying of special assessments, issuing bonds, creating of a sinking fund, and repeal of inconsistent laws.⁴⁹

§ 157. Acts relating to roads, bridges, ferries, etc.— Acts to provide for the construction of such works may confer the power of eminent domain for that purpose.⁵⁰ An act to provide for laying out, opening and extending streets in municipalities may include provisions validating former proceedings.⁵¹ Roads and bridges are not distinct subjects, and may be legislated upon in one act.⁵² An act to provide for establishing, working, repairing and maintaining the public roads and bridges in the several counties of the state authorized the levy of a county tax for the purpose, and provided that one-half the tax on property in incorporated towns and cities should be turned over to the municipalities to be used on their streets. The proviso was held within the title.⁵³ An act to appropriate money to aid in building bridges in certain counties may provide that the counties shall keep such bridges in repair.⁵⁴ An act to amend the

⁴⁷ *Golden Canal Co. v. Bright*, 8 Colo. 144.

⁴⁸ *Paxton & Hershey Irr. C. & L. Co. v. Farmers' etc. Co.*, 45 Neb. 884, 64 N. W. 848, 50 Am. St. Rep. 585, 29 L. R. A. 853.

⁴⁹ *Martin v. Tyler*, 4 N. D. 278, 60 N. W. 393, 25 L. R. A. 838; *Bye v. Stafford*, 4 N. D. 804, 60 N. W. 401; *Wishmier v. State*, 97 Ind. 160. For title of general drainage act held sufficient see *Lien v. County Com'rs*, 80 Minn. 58, 82 N. W. 1094.

⁵⁰ *Slocum v. Neptune*, 68 N. J. L. 595, 58 Atl. 801; *Seabolt v. Com'rs*, 187 Pa. St. 318, 41 Atl. 22.

⁵¹ *San Francisco v. Kiernan*, 98 Cal. 614, 33 Pac. 720.

⁵² *State v. Street*, 117 Ala. 203, 23 So. 807.

⁵³ *County Com'rs v. Jacksonville*, 36 Fla. 196, 18 So. 339.

⁵⁴ *State v. County Com'rs*, 83 Minn. 65, 85 N. W. 830.

general road law, which was applicable to counties not under township organization, contained a provision that the amendatory act should apply to counties under township organization. The provision was held void as not within the title.⁵⁵

§ 158 (100). **Acts relating to courts and judicial practice and proceedings.**— One act may relate to all or a portion of the courts of a state in defining their jurisdiction or regulating their practice. In the *Matter of Wakker*,⁵⁶ an act in relation to justices' and police courts of New York was held not to be obnoxious to constitutional objection on account of two courts being the subject of legislation. The court say: "It was the object of this law to establish justices' courts of civil and criminal jurisdiction within this city, and to abolish such minor jurisdictions as stood in the way of the courts to be created. The well-known jurisdiction of justices of the peace for the country is divided by this statute between the new justices created by it, upon one set of whom is conferred the civil and upon the other the criminal jurisdiction of the country magistrates. The office of justice, its tenure and jurisdiction, and the compensation of its incumbents are provided for, and clerks are ordered and compensated by this law." It provided also that its provisions should be applicable to the justices and clerk of the marine court. That court was substantially a justice's court, it being distinguishable only by having additional jurisdiction in certain marine cases not cognizable by justices. On this point the court say: "It would be giving an undue importance to this one feature in respect to jurisdiction to hold that this alone deprived it of the character of a justice's court, while it possessed all the main characteristics of that tribunal. It is still a court of inferior and limited jurisdiction, conducted, in all respects material to this argument, as a justice's court. If this be correct, then, in the strictest construction of the article of the constitution under consideration, a statute in relation

⁵⁵ *Shively v. Lankford*, 174 Mo. 535, 74 S. W. 835.

⁵⁶ 3 Barb. 162.

to justices' courts, confined to the organization and regulation of these courts, may properly embrace in its provisions the marine court."

An act was held valid in Kentucky which regulated the jurisdiction of several courts, the inferior courts of the state. It was an act to regulate the civil jurisdiction of justices of the peace, police judges and quarterly courts, and the appellate jurisdiction of the circuit courts on appeals from their judgments, and to authorize the quarterly courts to appoint clerks. The act was treated as one to regulate the jurisdiction of several of the courts of the state. The subject was deemed single.⁵⁷

Where the title was to create new courts in a county and to limit the jurisdiction of justices of the peace, it was held not to express two subjects.⁵⁸ An act for the better administration of justice in the town of Sweden abolished the office of police justice for the village of Brockport within the town and created the office of police justice for the town. The act was held valid.⁵⁹ Under a title to establish the city court of Valdosta in and for the county of Lowndes, a provision giving the court jurisdiction throughout the county was held germane.⁶⁰ An act to repeal an act establishing municipal courts, passed March 17, 1897, continued the courts until January 1, 1898. This was held within the title.⁶¹ An act in relation to superior courts and the election of superior court judges covers provisions for division of the state into districts, and for the election of judges in the districts.⁶² An act concerning evidence provided that the court might make an order for the examination of the person of the plaintiff in personal injury cases by a physician or surgeon in order to qualify him as a witness in the suit.

⁵⁷ Allen v. Hall, 14 Bush, 85.

⁶⁰ Mattox v. State, 115 Ga. 212, 41,

⁵⁸ In re Greer, 58 Kan. 268, 48 S. E. 709.
Pac. 950.

⁶¹ Bogue v. Seattle, 19 Wash. 396,

⁵⁹ People v. Lane, 53 App. Div. 53 Pac. 548.
581, 65 N. Y. S. 1004.

⁶² State v. Rusk, 15 Wash. 403,
46 Pac. 387.

The provision was held within the title.⁶³ An act was entitled "An act respecting writs of error." A supplement to the act provided for the review of cases on law or fact by a process which was called a writ of error, but which was not of the nature of a common-law writ of error but of an appeal. It was held not to be within the title.⁶⁴ An act to establish a court necessarily includes provisions for the appointment or election of a judge and other officers, and how and by whom jurors should be chosen and summoned.⁶⁵ An act to provide for appeals from interlocutory orders granting injunctions or appointing receivers may not provide for an appeal from an order refusing to dissolve an injunction or to discharge a receiver.⁶⁶ Where the title was "An act authorizing parties defendant in certain actions to sever, and to have the cause as to themselves transferred to the county of their residence," a provision that in certain actions a single defendant may have such transfer is void.⁶⁷

⁶³ *McGovern v. Hope*, 63 N. J. L. 76, 42 Atl. 830.

⁶⁴ *Falkner v. Dorland*, 54 N. J. L. 409, 24 Atl. 403. The court says: "The act does indeed designate such process a writ of error; but that does not make it such. Besides, in view of the constitutional prescription, such new-fangled process thus sought to be instituted must have been, before and at the time of the passage of the law, of the nature of a writ of error. or the title was grossly illusive. The process contrived by this law has for its function the removal of decisions founded on blended law and fact, a function that in no sense appertains to writs of error, whose sole ability always has been and is to bring before the higher court, for review in matters of law, the judgments of inferior jurisdictions. Most plainly, the procedure

before us is an appeal, and not one in error.

"The criterion in these cases is to ascertain as closely as practicable what impression, as to the object of the statute, its titular expression is calculated to disseminate. The obvious purpose of the requirement is to give information on the subject to legislators and the public. Looking at the title of the law in question in this way, it seems quite unreasonable to deny that its object as expressed is wholly misdescribed; consequently it is erroneous in the worst degree, for it is misleading." pp. 410, 411.

⁶⁵ *Commonwealth v. Green*, 58 Pa. St. 233.

⁶⁶ *Taylor v. Kirby*, 81 Ill. App. 658.

⁶⁷ *Saunders v. Savage*, 108 Tenn. 340, 67 S. W. 471.

§ 159. Acts relating to probate law and the descent and distribution of property.—An act entitled “An act to establish a probate code,” covered the whole subject of law usually administered in probate courts, wills, administration of estates, the descent and distribution of property, etc. The title was held sufficient and the act valid.⁶⁸ A comprehensive act must have a comprehensive title or it will be invalid.⁶⁹ An act to amend the chapter of the Revised States entitled “Dower,” by adding a new section thereto, provided by such new section that the husband should be entitled to one-half

⁶⁸Johnson v. Harrison, 47 Minn. 575, 50 N. W. 923, 28 Am. St. Rep. 382. The court says: “The word ‘code,’ as now generally used, and as obviously used in this title, means a ‘system of law’—‘a systematic and complete body of law.’ And while the word ‘probate’ originally meant merely ‘relating to proof,’ and afterwards ‘relating to the proof of wills,’ yet in the American law it is now a general name or term used to include all matters of which probate courts have jurisdiction, which in this state are ‘the estates of deceased persons and of persons under guardianship.’ Hence the term ‘probate code’ may and should be construed as meaning ‘the body or system of law relating to the estates of deceased persons and of persons under guardianship.’ In common understanding this is as distinct and clearly defined a branch of the law as is criminal law or corporation law, and in popular signification the term ‘probate law’ includes all matters of which probate courts generally have jurisdiction, among which is ‘estates of deceased persons.’ An examination of this act will show that all its provisions are

connected with this general subject. The fact that some of them relate to matters of mere procedure, while others define and fix rights of property, is no valid objection to the law. The same objection might be urged against many acts the constitutionality of which has never been questioned. Neither is the fact important that a law contains matters that might be, and usually are, contained in separate acts, or would be more logically classified as belonging to different subjects, provided only they are germane to the general subject of the act in which they are put. The legislature is not limited to the most logical or philosophical classification. The law of wills and of title to property by descent is a part of the law relating to the estates of deceased persons, and hence is, in popular understanding, if not logically, a part of the general subject of probate law.” pp. 578, 579.

⁶⁹Trumble v. Trumble, 37 Neb. 840, 55 N. W. 869. The act in this case was an attempt to combine the law of dower, curtesy, descent of property and homesteads in one act with a misleading and insufficient title.

the real and personal estate of his wife, when she died intestate and without children or descendants. This was held within the title. The court says: "While the title of the act in question may not be absolutely correct as a definition of the right conferred in the body of the bill, if the meaning of the term *dower* is to be considered as it was used and understood at common law, yet if we consider it in the meaning of the light of the general meaning of the term (that with which one is gifted or endowed), it is difficult to understand how it could be thought a deception upon the members of the legislature, or how it could have operated to mislead them as to the chief and only topic of the bill, however we might think best to designate or classify it."⁷⁰ "An act in regard to the descent of property" contained a provision that marriage should be deemed a revocation of a prior will. The provision was held valid, and the court said that any provision as to what should be deemed intestate estate would be germane to the title.⁷¹ A provision abolishing dower was held within a title to regulate the descent of real estate and the distribution of personal property.⁷²

§ 160. Acts relating to elections.—"An act to regulate municipal elections in the city of Louisville," provided for the manner of voting and conducting elections, the duties of officers of elections, and imposed penalties for violations of the act. The act was held to have but one subject and the provisions to be germane.⁷³ An act relating to elections made provision for appointments to office to fill vacancies; held not within the title.⁷⁴ An act to regulate the nomination and election of officers does not cover a provision for

⁷⁰ O'Brien v. Ash, 169 Mo. 283, 299, 69 S. W. 8.

⁷¹ Hundall v. Ham, 172 Ill. 76, 49 N. E. 985.

⁷² Richards v. Bellingham Bay

Land Co., 54 Fed. 209, 4 C. C. A. 290, 7 U. S. App. 494.

⁷³ Rogers v. Jacob, 88 Ky. 502, 11 S. W. 513.

⁷⁴ Ritchie v. Richards, 14 Utah, 845, 47 Pac. 670.

voting on an increase of municipal indebtedness, and the same was held void.⁷⁵

§ 161. Acts relating to taxation and revenue.—Under a title to enable a public corporation to raise money by tax, provisions may be included not only prescribing the procedure to assess and collect the tax, but the objects may be designated for which the money is to be raised.⁷⁶ An act entitled a supplement to “An act concerning taxes” is not open to the objection that it embraces more than one subject expressed in its title because it deals with several details of the matter of taxes.⁷⁷ An act for the more rigid collection of the revenue properly provides for the different classes of taxes and defines the duties of officers charged with their collection. It may define the jurisdiction of justices in revenue cases and prescribe the practice.⁷⁸ A statute of limitations may be inserted in a tax law for the purpose of aiding and assisting in the collection of taxes.⁷⁹ Where the title is in general words relating to the assessment and collection of taxes, or concerning taxation and revenue, or to provide revenue for the state, the following provisions have been held to be germane and included in the title: A provision as to the rate of taxation;⁸⁰ a provision imposing a tax upon the unsuccessful party in civil suits, and upon each indictment or presentment the sum of five dollars, to be taxed and paid as part of the costs in the case;⁸¹ provisions defining peddlers, requiring them to take out a license, that all notes given for articles or rights sold by peddlers shall have written or printed across their face

⁷⁵ *Evans v. Willistown Tp.*, 168 Pa. St. 578, 82 Atl. 87; *Commonwealth v. Weir*, 15 Pa. Co. Ct. 425.

⁷⁶ *Sun Mut. Ins. Co. v. Mayor, etc.*, 8 N. Y. 252; *Sharp v. Mayor, etc.*, 31 Barb. 572–575; *Smith v. Mayor, etc.*, 84 How. Pr. 508.

⁷⁷ *Kirkpatrick v. New Brunswick*, 40 N. J. Eq. 46; *Brown v. State*, 78 Ga. 38.

⁷⁸ *State v. Whitworth*, 8 Lea, 594; *Ensign v. Basse*, 107 N. Y. 329, 14 N. E. 400. See *State v. Wardens*, 28 La. Ann. 720.

⁷⁹ *Bowman v. Cockrill*, 6 Kan. 311.

⁸⁰ *Manchester v. People*, 178 Ill. 285, 52 N. E. 964.

⁸¹ *Ex parte Griffen*, 88 Tenn. 547, 18 S. W. 75.

the words "Peddler's Note," and that notes not so indorsed shall be void;⁸² a provision that, after a tax is delinquent, any person may pay the tax and interest and that the treasurer shall thereupon issue to such person a certificate of such payment, which shall contain a guaranty of the county or municipality that if the tax is void it will refund to the holder the amount paid and interest.⁸³ But in another case it was held that a provision that, when taxes are paid on land not subject to taxation, the money shall be refunded with interest to the person making the payment, was not within the title of an act relating to the levy and collection of taxes.⁸⁴

An act to create a state board of equalization may provide that the state tax shall be apportioned on the basis of the equalized valuation as fixed by such board.⁸⁵ "An act to create a treasurer of Calvert county and to provide for the collection of taxes therein," provided for such treasurer, and authorized him to appoint a deputy, and provided that such deputy should act as clerk of the county commissioners. It was held that the subject of the act was the collection of taxes in the county, and that the provisions were all germane to this subject.⁸⁶ Where the title refers to the assessment of tracts of land divided by county lines, provisions as to the assessment of lands divided by borough or township lines are not within the title.⁸⁷ "An act for the taxation of dogs and protection of sheep," provided that dogs should be deemed personal property and the subject of larceny. The provision was held germane.⁸⁸ An amendment to an act relating to the lien of taxes as between vendor and vendee provided that when a merchant

⁸² Nunn v. Citizens' Bank, 107 Ky. 262, 58 S. W. 665.

⁸³ State v. Whittlesey, 17 Wash. 447, 50 Pac. 119.

⁸⁴ Divet v. Richland Co., 8 N. D. 65, 76 N. W. 993.

⁸⁵ State v. Linn County, 25 Ore. 508, 36 Pac. 297.

⁸⁶ County Com'rs v. Hellen, 72 Md. 603, 20 Atl. 130.

⁸⁷ La Plume v. Gardner, 148 Pa. St. 192, 23 Atl. 899.

⁸⁸ Commonwealth v. Depuy, 148 Pa. St. 201, 23 Atl. 896.

sold a stock of goods in bulk after the tax thereon was payable, the tax should be a lien on the goods in the hands of the vendee, and that when the sale took place after the assessment was made and before the tax was due or payable, the auditor should, on notice, substitute the name of the vendee in place of that of the vendor in the assessment, and thereupon the tax should be collectible against the vendee the same as though originally assessed in his name. The latter was held not within the title.⁸⁹ An act to provide for an appeal from the order of county commissioners disallowing a petition to modify an assessment for taxation may provide what the original petition to the county commissioners shall contain and that the court, on appeal, shall be governed by the values fixed upon similar property.⁹⁰ "An act to authorize boards of supervisors to provide for the discovery of property withheld from taxation, and to list the same and collect taxes thereon, and to legalize contracts heretofore made for that purpose by boards of supervisors upon certain conditions," covered the ground indicated by the title, and was held to embrace but one subject and provisions properly connected therewith, and to be valid.⁹¹ "An act to tax intestate estates, gifts, legacies and collateral inheritance in certain cases," was held insufficient to cover a tax on a devise of lands, as it did not fall within any of the classes specified in the title.⁹² "An act to allow further time to the treasurer of Henrico county to make returns of delinquent taxes," applied to ex-treasurers only and was held misleading and void.⁹³ "An act to increase the revenues of the state by changing and increasing the boundaries of the counties of Billings, Stark and Mercer," simply increased the counties specified. As this did not

⁸⁹ *Rex Lumber Co. v. Reed*, 107 Iowa, 111, 77 N. W. 572.

⁹⁰ *Catron v. County Com'rs*, 18 Colo. 553, 33 Pac. 513.

⁹¹ *Beresheim v. Arnd*, 117 Iowa, 83, 90 N. W. 506.

⁹² *Grossman v. Hancock*, 58 N. J. L. 139, 32 Atl. 689.

⁹³ *Henrico Co. Sup'rs v. McGruder*, 84 Va. 828, 6 S. E. 232.

affect the revenues of the state, it was held that the title did not express the subject of the act.⁹⁴

§ 162. Curative acts and provisions.—A curative act may apply to any number of instruments or proceedings. One act legalized the proceedings in three separate towns, though taken distinct from each other, to issue bonds in aid of a railroad. By miscarriage of some promoters of them they failed to comply with the law under which they were set on foot, so as not to be efficacious. It was held that the bill contained but one subject.⁹⁵ The court said it was a local bill, to have effect upon that separate portion of the state. The object of it was to legalize and validate certain doings in that territory, which, although carried on distinct from each other, had a common aim and purpose. So an act to confirm, reduce and levy certain assessments in the city of B. was held to embrace but one subject.⁹⁶

As a general rule an act to revise, consolidate or amend a charter, or to revise or amend an act conferring powers, may legalize defective acts and proceedings taken under the act or charter revised or amended.⁹⁷ An act conferring upon county boards power to make certain contracts may confirm like contracts previously made without authority.⁹⁸ An act conferring additional powers upon the town board of Jamaica relative to the public lands in such town authorized the sale and lease of such lands, provided how such sales and leases should be made, and that they should “be subject to existing leases, *which leases are hereby rati-*

⁹⁴ Richard v. Stark County, 8 N. D. 392, 79 N. W. 863.

⁹⁵ Rogers v. Stephens, 86 N. Y. 623.

⁹⁶ In re Van Antwerp, 1 T. & C. 428.

⁹⁷ Park v. Modern Woodmen, 181 Ill. 214, 54 N. E. 982; People v. Sutphin, 166 N. Y. 163, 59 N. E. 770; Nottage v. Portland, 35 Ore. 539, 58 Pac. 883, 76 Am. St. Rep. 513; Bosang v. Iron Belt B. & L.

Ass'n, 96 Va. 119, 30 S. E. 440.

Compare Snell v. Chicago, 133 Ill.

413, 24 N. E. 532, 8 L. R. A. 858;

Matter of City of Rochester, 77

App. Div. 28, 79 N. Y. S. 236; Per-

cival v. Cowychee, etc. Dist., 15

Wash. 480, 46 Pac. 1035; Rogers v.

Union Ry. Co., 10 Misc. 57, 80 N. Y.

S. 855.

⁹⁸ Beresheim v. Arnd, 117 Iowa,

83, 90 N. W. 506.

fied and confirmed." The italics was held not to be within the title.⁹⁹

§ 163. Acts relating to intoxicating liquors.—As a means of enforcing a law for regulating and licensing the sale of intoxicating liquors, it may provide that a house where such liquors are sold, if kept in a disorderly manner, may be deemed a common nuisance; that so keeping it shall cause a forfeiture of the license, and subject the proprietor to a fine.¹ For a like purpose the act may provide that the applicant for a license shall give a bond to the state conditioned, among other things, that he will pay all fines and costs that may be assessed against him for violating the provisions of the act.² As a means of enforcing the payment of a special tax on dealers in liquors, it is germane to provide that upon failure to pay such tax the dealer may be indicted and punished for a misdemeanor.³

Where the title indicates the purpose of the act to be to *regulate* the sale of intoxicating liquors, it may include all the various means of enforcing compliance with the act,⁴ may include penalties for violation, confer jurisdiction of suits for such violation and provide for remonstrances against the granting of licenses.⁵ Such an act may provide for local option and prohibit sale in localities which vote for prohibition, and such partial prohibition will be deemed regulation within the title of the act.⁶ The following provisions have also been held germane and within such a title: that it should be unlawful to permit any minor to remain in the room where liquors are sold,⁷ that the dealer should

⁹⁹ *Wenk v. New York*, 82 App. Div. 584, 81 N. Y. S. 583.

¹ *Fletcher v. State*, 54 Ind. 462; *O'Kane v. State*, 69 Ind. 183; *State v. Owens*, 9 Kan. App. 595, 58 Pac. 240.

² *Kane v. State*, 78 Ind. 103.

³ *Brown v. State*, 78 Ga. 88; *Howell v. State*, 71 Ga. 224, 51 Am. Rep. 259.

⁴ *Wilson v. Herink*, 64 Kan. 607, 68 Pac. 72.

⁵ *State v. Gerhardt*, 145 Ind. 439, 44 N. E. 469.

⁶ *State v. Forkner*, 94 Iowa, 1, 62 N. W. 683; *State v. Gloucester Co.*, 50 N. J. L. 585, 15 Atl. 272.

⁷ *People v. Japinga*, 115 Mich. 222, 78 N. W. 111.

give bond to comply with the act, and that any person aggrieved by such violation might sue on the bond and recover five hundred dollars liquidated damages for each breach of the condition.⁸

A provision that part of the revenue derived from licenses should be expended on the public roads was held germane.⁹ An act to *regulate* the sale of liquor may not altogether prohibit the sale.¹⁰ When the title refers to sales only, provisions as to giving away or otherwise disposing of liquor are not included.¹¹

An act to *prohibit* the sale of liquors, like an act to regulate their sale, may embrace all the provisions necessary for its enforcement, including penalties, and the designation of a tribunal to try violations of the act.¹² It has been held that an act to prohibit the sale may simply regulate the sale; the court holding that "regulating a thing is the prohibition of it, except in accordance with certain rules."¹³ An act to prohibit the sale of liquor provided for refunding the money paid on unexpired licenses; held not within the title.¹⁴ An act to license the sale of liquor may impose a penalty for selling without a license.¹⁵ Where the title specified the territory in which it was to operate, and the act specified different territory, it was held void.¹⁶ A provision making the operation of the act conditioned on the result of a popular vote is germane.¹⁷ Where the title applies to cities only the act may not include towns.¹⁸ An act relating to gam-

⁸ Peavy v. Goss, 90 Tex. 89, 87 S. W. 817.

⁹ Lynch v. Murphy, 119 Mo. 103, 24 S. W. 774.

¹⁰ Crabb v. State, 88 Ga. 584, 15 S. E. 455; Yahn v. Merritt, 117 Ala. 485, 23 So. 71.

¹¹ State v. Davis, 180 Ala. 148, 80 So. 844, 89 Am. St. Rep. 23.

¹² McTigue v. Commonwealth, 99 Ky. 66, 85 S. W. 121; Brown v. Hart, 97 Ky. 735, 81 S. W. 786.

¹³ Cantini v. Tillman, 54 Fed. 969.

¹⁴ Bradley v. State, 99 Ala. 177, 13 So. 415.

¹⁵ Burns v. State, 104 Ga. 544, 30 S. E. 815. *Contra*, Sasser v. State, 99 Ga. 54, 25 S. E. 619.

¹⁶ Ryno v. State, 58 N. J. L. 238, 83 Atl. 219.

¹⁷ McGruder v. State, 83 Ga. 616, 10 S. E. 441; Whitman v. State, 80 Md. 410, 31 Atl. 825.

¹⁸ Jones v. Morristown, 66 N. J. L. 488, 49 Atl. 440.

bling devices in dramshops provided that the dramshop keeper should not keep, or permit to be kept, in or about his dramshop, any billiard, pool or other gaming table, bowling, or ten-pin alley, cards, dice, or other device for gaming or amusement, and should not "permit any sparring, boxing, wrestling, or other exhibition or contest or cock fight in his dramshop." The whole was held to be within the title. It was held that "device" might mean any contrivance, or anything contrived or planned, and so include the provision quoted.¹⁹

§ 164. Pure food laws.—An act entitled "to prevent deception in the sale of dairy products, and to preserve the public health," goes beyond its title in making the manufacture of imitation butter a crime.²⁰ So of an act "to prohibit and prevent adulteration, fraud and deception in the manufacture and sale of articles of food and drink."²¹ An act "to prevent fraud in the sale of lard" forbade the sale of any article intended for use as lard which contained any ingredient other than pure fat of healthy swine, unless it was labeled "compound lard" and showed the ingredients it contained. This was held within the title.²² An act "to provide against the adulteration of food" declared it to be an adulteration "if any inferior or cheaper substance or substances have been substituted in whole or in part for it," or "if it is an imitation of or is sold under the name of another article." These were held within the title.²³

¹⁹ State v. Blackstone, 115 Mo. 424, 22 S. W. 870.

²⁰ Northwestern Manuf'g Co. v. Wayne Circuit Judge, 58 Mich. 381, 25 N. W. 372, 55 Am. Rep. 693. See People v. Arensberg, 105 N. Y. 123, 11 N. E. 277, 59 Am. Rep. 488.

²¹ Grosvenor v. Duffy, 121 Mich. 220, 80 N. W. 19. The court says: "When the legislature attempts to change definitions, and to make acts criminal which are *per se* in-

nocent and contain no element of wrong, there must be something in the title to show such purpose or object, under section 20, article 4, of the constitution. The title contains not even an intimation that an entirely innocent act is to be made a crime." p. 223.

²² State v. Snow, 81 Iowa 642, 47 N. W. 777, 11 Am. St. Rep. 355.

²³ Commonwealth v. Curry, 4 Pa. Supr. Ct. 356.

§ 165. Acts relating to gaming, pool-selling, etc.—An act to prevent gaming may make it an offense to keep any house or place for the purpose of betting therein,²⁴ or give an action to recover back money lost at gaming.²⁵ “An act to prohibit the use of clock, tape, slot or other machines or devices for gambling purposes,” may embrace provisions to punish for operating, keeping, owning, renting or using such machines or devices for gambling purposes.²⁶

An act to prohibit book-making and pool-selling may be limited in its application to events taking place without the state.²⁷ The title of an act may be broad enough to include all forms of gambling,²⁸ but when it relates to one form only, such as pool-selling, provisions as to other forms of gambling will be void.²⁹

§ 166. Acts relating to fish, game, etc.—An act for the protection of game, wild fowl and birds may include both game and non-game birds in its provisions. “It is to be presumed,” says the court, “the general assembly, in framing the title to the act, employed the word ‘game’ in its proper sense, and therefore as including all game birds, game fowl and all game animals. That being true, it is clear the words ‘wild fowl and birds’ were added for the reason the word ‘game’ did not include certain species of wild fowl and birds designed to be protected by the act. The intent which controlled in the addition of these words was, that the title should disclose that birds and fowl which were not game birds or game fowl were objects of the enactment.”³⁰

In Maryland it is held that a provision making it unlawful for one to have in his possession during the closed season birds or game brought from another state is within the title

²⁴ *Lescallett v. Commonwealth*, 89 Va. 878, 17 S. E. 546.

²⁵ *Maling v. Crummey*, 5 Wash. 222, 31 Pac. 600.

²⁶ *Bobel v. People*, 173 Ill. 19, 50 N. E. 322, 64 Am. St. Rep. 64.

²⁷ *State v. Burgdoerfer*, 107 Mo. 1, 17 S. W. 646.

²⁸ *Benness v. State*, 124 Ala. 97, 26 So. 942.

²⁹ *Lacey v. Palmer*, 93 Va. 159, 24 S. E. 930, 57 Am. St. Rep. 795.

³⁰ *Meul v. People*, 193 Ill. 258, 260, 64 N. E. 1106.

of an act for the protection and preservation of birds and game,³¹ but the contrary is held in Minnesota.³² An act to *regulate* the catching of fish forbade the taking of fish during a certain period of the year. This was held to be regulation and within the title.³³ An act to protect salmon and other food fishes may forbid the casting into streams of saw dust, shavings and waste lumber.³⁴ An act to prohibit the catching of game fish in certain cases required the owners of dams to make fish-ways. This was held not within the title.³⁵

§ 167. **Acts relating to crimes in general.**—An act to punish cheats, frauds, etc., may prescribe the form of indictment.³⁶ Where the title relates to misdemeanors only, provisions as to felonies are void.³⁷ An act to prohibit the practice of blacklisting made it unlawful for any company, corporation or partnership to prevent or hinder any discharged employee, or employee who had voluntarily left the service, from obtaining employment elsewhere; held within the title.³⁸ An act “to provide for the punishment of crimes in certain cases,” made it a felony to take indecent liberties with male children. It was held that the title gave no hint as to the character of the act to be punished and therefore failed to comply with the constitution.³⁹ A title “to define and suppress vagrancy” was held to cover provisions as to the fees of constables and magistrates in enforcing the law.⁴⁰ An act to add a new section to sub-title “Rivers” in article 30 of the code, entitled “Crimes and Punishments,” pro-

³¹ *Stevens v. State*, 89 Md. 669, 48 Atl. 829.

³² *State v. Chapel*, 63 Minn. 535, 65 N. W. 940.

³³ *Osborn v. Charlevoix Circ. Judge*, 114 Mich. 655, 72 N. W. 982.

³⁴ *State v. Shaw*, 22 Ore. 287, 29 Pac. 1028.

³⁵ *West Point Water Power & L. I. Co. v. State*, 49 Neb. 223, 68 N. W. 507.

³⁶ *State v. Morgan*, 112 Mo. 202, 20 S. W. 456.

³⁷ *Harper v. State*, 109 Ala. 28, 19 So. 857; *Harper v. State*, 109 Ala. 66, 19 So. 901.

³⁸ *State v. Justus*, 85 Minn. 279, 88 N. W. 759, 89 Am. St. Rep. 550.

³⁹ *In re Snyder*, 108 Mich. 18, 65 N. W. 562.

⁴⁰ *Hays v. Cumberland County*, 5 Pa. Supr. Ct. 159; affirmed, 186 Pa. St. 109, 40 Atl. 282.

vided in the new section that it should be a penal offense to dredge, take or carry away sand or gravel from the bed of the Potomac. The section was held within the title.⁴¹ An act relative to disorderly persons defined who should be considered disorderly persons and included drunkards and tipplers. This was held within the title.⁴² An act to amend section 4614 of the code so as to raise the age of consent, as set forth in said section, to twelve years, and to prescribe punishment in the penitentiary against persons having carnal knowledge of females over twelve and under sixteen, was held to express but one subject, and a provision making all persons aiding or abetting the crime principals, was held germane.⁴³ Where the title relates to crimes and punishments and criminal proceedings, provisions relating to a civil proceeding in bastardy are not within the title.⁴⁴ An act with a similar title prohibited the sale or keeping for sale of cigarettes and also imposed a license tax upon any person who sold or kept the same for sale and upon the real estate where the same were sold or kept for sale. The provision for a license tax was held to be in the nature of an additional penalty, to tend to the suppression of the traffic, and to be within the title.⁴⁵

§ 168. Acts relating to convicts and penal institutions. The following provisions were held not to be within a title to regulate the management of state and county convicts:

⁴¹ *State v. Norris*, 70 Md. 91, 16 Atl. 445.

⁴² *People v. Kelly*, 99 Mich. 82, 57 N. W. 1090.

⁴³ *State v. Brown*, 103 Tenn. 449, 53 S. W. 727. The court says: "In reality, the subject is single, and the two purposes indicated relate to different parts of that one subject, which is the prevention and punishment of carnal connection with young females. This subject, though not formulated in the

language we have employed, is clearly expressed in the title when reduced to its shortest meaning and read in connection with the law amended, and such a title, though sufficiently broad in its scope to include two or more different grades or classes of crime, is nevertheless, single and expresses but one subject."

⁴⁴ *State v. Tieman*, 82 Wash. 294.

⁴⁵ *Cook v. Marshall County*, 119 Iowa, 384, 93 N. W. 372.

providing for additional imprisonment for costs;⁴⁶ providing for payment by the state of certain costs in criminal trials;⁴⁷ providing that when the term of sentence is two years or less, the sentence shall be to hard labor for the county, and when for more than two years, to hard labor in the penitentiary.⁴⁸ An act to amend a specified contract for convict labor may not provide for leasing the convict labor.⁴⁹

An act to revise the laws relative to the state prison may provide for the punishment of crimes committed by convicts within the prison.⁵⁰ But a provision that if any convict should escape or attempt to escape, or mutiny or incite mutiny, or the like, he should be tried in a certain court on information by the warden, and, if found guilty, should lose the benefit of all time served on his sentence and should be re-sentenced for the full original term, was held not to be within such a title.⁵¹ An act was entitled "An act to provide for the maintenance, government and police of the penitentiary." It was held that a provision that, where persons are hereafter convicted and punished by imprisonment, it shall

⁴⁶ *Brown v. State*, 115 Ala. 74, 22 So. 458.

⁴⁷ *White v. Burgin*, 118 Ala. 170, 21 So. 832. But a title "to create a new convict system for the state" was held sufficient to cover the provision in question.

⁴⁸ *Ex parte Gayles*, 108 Ala. 514, 19 So. 12. The court says: "Here, as we plainly see, we are carried back from where hard labor and the management of the convict set in, which is the subject of this enactment, as indicated in its title, to a point after conviction and before sentence, by virtue of which sentence alone, the convict is subject to the management provided for in the act, his conviction and sentence being quite another and

different subject from that of his management during the existence of the sentence. . . . If this section is germane to the title, it would seem to follow that the legislature might have proceeded in the act to legislate generally on the subject of the punishment of criminals convicted of crime and abolished capital punishment, established a whipping post and revised largely the criminal statutes of the state." p. 516.

⁴⁹ *State v. Holcomb*, 46 Neb. 612, 65 N. W. 873.

⁵⁰ *People v. Huntley*, 112 Mich. 569, 71 N. W. 178.

⁵¹ *State v. Lewin*, 53 Kan. 679, 37 Pac. 168.

be in the penitentiary, if it exceeds six months, was not within the title.⁵² An act to provide for the organization and management of a state reform school may embrace provisions for the committing of children thereto by the various courts.⁵³

§ 169. **Miscellaneous cases in which acts were held to conform to the constitution as to title.**—An act providing for the sale of school lands may define the rights acquired by a purchaser.⁵⁴ So a grant of lands in aid of a public improvement may contain a provision exempting the land from taxation for a limited time.⁵⁵ An act in relation to the manufacture and sale of vinegar may provide against adulteration and deception in sale.⁵⁶ An act to regulate the practice of medicine may include surgery, obstetrics, osteopathy and christian science.⁵⁷ An act to enable park commissioners to make local improvements may authorize the levy of a new assessment to pay for an improvement previously completed.⁵⁸ An act to regulate the foreclosure of chattel mortgages on household goods provided that no chattel mortgage executed by a married man or woman on household goods should be valid unless both husband and wife joined in its execution. The provision was held valid on the ground that whatever related to the validity of the mortgage to be foreclosed was germane.⁵⁹ An act to regulate the recording of title notes or evidences of conditional sales may

⁵² *Brooks v. People*, 14 Colo. 413, 24 Pac. 553.

⁵³ *In re Sanders*, 53 Kan. 191, 36 Pac. 848, 23 L. R. A. 603.

⁵⁴ *Prescott v. Beebe*, 17 Kan. 320. It was held in *Swayze v. Britton*, 17 Kan. 625, that an act "concerning notaries public" was not broad enough to include a provision authorizing notaries public protesting commercial paper to give notice thereof to parties secondarily liable. This conclusion cannot be reconciled with the rule of construction generally adopted.

⁵⁵ *Board of Supervisors v. Auditor-General*, 65 Mich. 408, 32 N. W. 657.

⁵⁶ *People v. Worden Grocery Co.*, 118 Mich. 604, 77 N. W. 315.

⁵⁷ *Little v. State*, 60 Neb. 749, 84 N. W. 257; *State v. Buswell*, 40 Neb. 158, 57 N. W. 1019.

⁵⁸ *West Chicago Park Com'rs v. Sweet*, 167 Ill. 326, 47 N. E. 728; *West Chicago Park Com'rs v. Farber*, 171 Ill. 146, 49 N. E. 427.

⁵⁹ *Gaines v. Williams*, 146 Ill. 450, 84 N. E. 934; *Flynn v. Coakley*, 164 Ill. 470, 45 N. E. 1070.

provide that such writings shall be void if not recorded.⁶⁰ In "An act relating to libel and its punishment," a provision abolishing punitive damages in civil actions for libel was held germane.⁶¹ "An act granting to the city of Mobile the riparian rights of the river front" was held sufficient to cover the grant of the fee of the river front.⁶² An act to amend an article of the code entitled "Oysters" may require persons engaged in packing oysters to pay a license.⁶³ An act to provide for the organization, regulation and inspection of building and loan associations, and to repeal the former law on the subject, forbade any building and loan association to do business in the state without complying with the act, provided "that, except as to taxation, this act shall not affect any such association heretofore organized under the laws of the state of Montana, unless it elects to come under its provisions." The proviso was held to be within the title.⁶⁴ An act to provide for the manner of selecting the police force of the city of Birmingham, in reality related to the constitution and election of the board of police commissioners, who appointed the policemen. The act was held within the title, because it related to the manner of selecting the police force by dealing with the instrumentality of their selection.⁶⁵ A title was held not to be bad for the mere reason that it described a repealed act.⁶⁶

Numerous additional cases are cited in the margin in which the acts or provisions in question were held within the title of the respective acts.⁶⁷ These cases are referred

⁶⁰ *Otto Gas Engine Works v. Hare*, 64 Kan. 78, 67 Pac. 444.

⁶¹ *Goebeler v. Wilhelm*, 17 Pa. Supr. Ct. 432.

⁶² *Mobile Transportation Co. v. Mobile*, 128 Ala. 335, 30 So. 645, 86 Am. St. Rep. 143.

⁶³ *State v. Applegarth*, 81 Md. 293, 31 Atl. 961, 28 L. R. A. 812.

⁶⁴ *Home B. & L. Ass'n v. Nolan*, 21 Mont. 205, 53 Pac. 738.

⁶⁵ *State v. McCary*, 128 Ala. 139, 30 So. 641.

⁶⁶ *Reynolds v. Board of Education*, 66 Kan. 672, 72 Pac. 274.

⁶⁷ *Alabama*: *Dean v. State*, 100 Ala. 102, 14 So. 762; *State v. Rogers*, 107 Ala. 444, 19 So. 909; *Daughdrill v. State*, 113 Ala. 7, 21 So. 378; *State v. Stripling*, 113 Ala. 120, 21 So. 409; *Ex parte Mayor*, 116 Ala. 186, 22 So. 454; *State v. Winter*,

to in the hope that those of each state may be of some use to the practitioners of that state.

118 Ala. 1, 24 So. 89; *Lewis v. State*, 123 Ala. 84, 26 So. 516; *Williams v. Board of Revenue*, 123 Ala. 432, 26 So. 346; *State v. Crook*, 126 Ala. 600, 28 So. 745; *Sheppard v. Dowling*, 127 Ala. 1, 28 So. 791, 85 Am. St. Rep. 68; *Ellis v. Miller*, 136 Ala. 185, 33 So. 890.

California: *Ex parte Kohler*, 74 Cal. 38, 15 Pac. 436; *People v. Dunn*, 80 Cal. 211, 22 Pac. 140, 13 Am. St. Rep. 118; *Pennie v. State*, 80 Cal. 266, 22 Pac. 176; *People v. Superior Ct.*, 100 Cal. 105, 34 Pac. 492; *Jones v. Falvella*, 126 Cal. 24, 58 Pac. 311; *Los Angeles County v. Spencer*, 126 Cal. 670, 59 Pac. 202, 77 Am. St. Rep. 217; *People v. King*, 127 Cal. 570, 60 Pac. 35; *People v. Linda Vista Irr. Dist.*, 128 Cal. 477, 61 Pac. 86; *Carpenter v. Furry*, 128 Cal. 665, 61 Pac. 369; *People v. Mullender*, 132 Cal. 217, 64 Pac. 299; *People v. Cobb*, 133 Cal. 74, 65 Pac. 325; *Jackson v. Baehr*, 138 Cal. 266, 71 Pac. 167.

Colorado: *Stockman v. Brooks*, 17 Colo. 248, 29 Pac. 746; *Airy v. People*, 21 Colo. 144, 40 Pac. 362; *Cardillo v. People*, 26 Colo. 355, 58 Pac. 678; *Liggett v. People*, 26 Colo. 364, 58 Pac. 144; *Lamar Canal Co. v. Amity Land & Irr. Co.*, 26 Colo. 370, 58 Pac. 600, 77 Am. St. Rep. 261; *Merwin v. County Com'rs*, 29 Colo. 169, 67 Pac. 285; *Mollie Gibson Con. M. & M. Co. v. Sharp*, 5 Colo. App. 321, 35 Pac. 918.

Florida: *Holton v. State*, 23 Fla. 303, 9 So. 716; *Smith v. State*, 29 Fla. 408, 10 So. 894.

Georgia: *Spier v. Morgan*, 80 Ga.

581, 5 S. E. 768; *Macon & Birmingham R. R. Co. v. Gibson*, 85 Ga. 1, 11 S. E. 442, 21 Am. St. Rep. 135; *Columbus Southern Ry. Co. v. Wright*, 89 Ga. 574, 15 S. E. 293; *Butler v. State*, 89 Ga. 821, 15 S. E. 768; *Silvoy v. Phoenix Ins. Co.*, 94 Ga. 609, 21 S. E. 607; *Carson v. Mayor*, 94 Ga. 617, 20 S. E. 116; *McCommons v. English*, 100 Ga. 653, 28 S. E. 386; *Brand v. Lawrenceville*, 104 Ga. 486, 30 S. E. 954; *Cunningham v. Griffin*, 107 Ga. 690, 33 S. E. 664; *Murray v. State*, 112 Ga. 7, 37 S. E. 111; *Welborne v. State*, 114 Ga. 793, 40 S. E. 857; *Hirsch v. Brunswick*, 114 Ga. 776, 40 S. E. 786.

Illinois: *Danville v. Danville W. Co.*, 180 Ill. 235, 54 N. E. 224; *Boehm v. Hertz*, 182 Ill. 154, 54 N. E. 973, 48 L. R. A. 575; *Arms v. Ayer*, 192 Ill. 601, 61 N. E. 851, 85 Am. St. Rep. 357; *In re St. Louis Loan & Invest. Co.*, 194 Ill. 609, 63 N. E. 810.

Indiana: *Rushville Gas Co. v. Rushville*, 121 Ind. 206, 23 N. E. 72, 16 Am. St. Rep. 888; *State v. Kolsen*, 130 Ind. 434, 29 N. E. 595, 14 L. R. A. 566; *Smith v. McClain*, 146 Ind. 77, 45 N. E. 41; *Chicago & Eastern Ill. R. R. Co. v. State*, 153 Ind. 134, 51 N. E. 924; *Gustavel v. State*, 153 Ind. 613, 54 N. E. 123; *Burget v. Merritt*, 155 Ind. 143, 57 N. E. 714; *Parks v. State*, 159 Ind. 211, 64 N. E. 862.

Iowa: *Guaranty Savings & L. Ass'n v. Ascherman*, 108 Iowa, 150, 78 N. W. 823.

Kansas: *Barber Co. Com'rs v.*

§ 170. Miscellaneous cases in which acts were held not to conform to the constitution as to title.— Where the title of an act indicated a general law and the body of the

Smith, 48 Kan. 381, 29 Pac. 559, 565; State v. Campbell, 50 Kan. 433, 32 Pac. 85; Blaker v. Hood, 53 Kan. 499, 36 Pac. 1115, 24 L. R. A. 854; Eudora v. Darling, 54 Kan. 654, 39 Pac. 184; Lynch v. Chase, 55 Kan. 367, 40 Pac. 666; Aikman v. Edwards, 55 Kan. 751, 42 Pac. 366, 30 L. R. A. 149; State v. Shepard, 64 Kan. 451, 67 Pac. 870; State v. Wilcox, 64 Kan. 789, 68 Pac. 662; State v. Dunn, 66 Kan. 488, 71 Pac. 811; Higgins v. Mitchell Co., 6 Kan. App. 314, 51 Pac. 72; Inlow v. Graham Co., 6 Kan. App. 391, 51 Pac. 65; State v. Haun, 7 Kan. App. 509, 54 Pac. 130; Ireton v. Lonbuer, 9 Kan. App. 561, 58 Pac. 278.

Kentucky: Commonwealth v. Godshow, 92 Ky. 435, 17 S. W. 737; Van Meter v. Spurrier, 94 Ky. 22, 21 S. W. 837; White v. Commonwealth, 20 Ky. L. R. 1942, 50 S. W. 678; Raubold v. Commonwealth, 21 Ky. L. R. 1125, 54 S. W. 17; Murphy v. Louisville, 24 Ky. L. R. 1574, 71 S. W. 84; Weber v. Commonwealth, 24 Ky. L. R. 1726, 72 S. W. 30; Commonwealth v. McConnell, 25 Ky. L. R. 52; Huyser v. Commonwealth, 25 Ky. L. R. 608.

Louisiana: Conery v. New Orleans W. W. Co., 41 La. Ann. 910, 7 So. 8; Lucky v. Police Jury, 46 La. Ann. 679, 15 So. 89; State v. People's Slaughter House, etc. Co., 46 La. Ann. 1031, 15 So. 408; McKeon v. Sumner Building Supply Co., 51 La. Ann. 1961, 26 So. 430; State v. Lee, 106 La. 400, 31 So. 14.

Maryland: Ellicott Machine Co. v. Speed, 72 Md. 22, 18 Atl. 863; Gans v. Carter, 77 Md. 1, 25 Atl. 663; Bond v. State, 78 Md. 523, 28 Atl. 407; Hamilton v. Carroll, 82 Md. 826, 33 Atl. 648; Phinney v. Sheppard, etc. Hospital, 88 Md. 633, 42 Atl. 58.

Michigan: Feek v. Township Board, 82 Mich. 393, 47 N. W. 37, 10 L. R. A. 69; Hall v. Burlingame, 88 Mich. 438, 50 N. W. 289; Frary v. Allen, 91 Mich. 666, 52 N. W. 78; Van Husan v. Hearnese, 96 Mich. 504, 56 N. W. 22; Toll v. Jerome, 101 Mich. 468, 59 N. W. 316; Grand Rapids v. Burlingame, 102 Mich. 321, 60 N. W. 698; Rice v. Hosking, 105 Mich. 303, 63 N. W. 311, 55 Am. St. Rep. 448; Barnard v. McLeod, 114 Mich. 73, 72 N. W. 24; Jackson v. Jackson Co., 117 Mich. 305, 75 N. W. 617; Sunderlin v. Board of Sup'rs, 119 Mich. 535, 78 N. W. 651; Board of State Tax Com'rs v. Board of Assessors, 124 Mich. 491, 83 N. W. 209; Chipman v. Wayne Co. Auditors, 127 Mich. 490, 86 N. W. 1024; Jackson & Suburban Traction Co. v. Commissioner of R. R., 128 Mich. 164, 87 N. W. 133; Shearer v. Board of Sup'rs, 128 Mich. 552, 87 N. W. 789.

Minnesota: Stolz v. Thompson, 44 Minn. 271, 46 N. W. 410; State v. Bigelow, 52 Minn. 307, 54 N. W. 95; Willis v. Standard Oil Co., 50 Minn. 290, 52 N. W. 652; Kelly v. Minneapolis City, 57 Minn. 294, 59 N. W. 304, 47 Am. St. Rep. 605, 26 L. R. A. 92; Lynott v. Dickerman, 65

act, though in form general, was so qualified and limited that it could apply to only one county, and was therefore local, the title was held to be misleading and the act void.⁶⁸ Under a

Minn. 471, 67 N. W. 1148; Fleckten v. Lamberton, 69 Minn. 187, 72 N. W. 65; Anderson v. Seymour, 70 Minn. 858, 73 N. W. 171; State v. Phillips, 73 Minn. 77, 75 N. W. 1029; Wm. Deering Co. v. Peterson, 75 Minn. 118, 77 N. W. 568; O'Brien v. St. Croix Boom Co., 75 Minn. 348, 77 N. W. 991; State v. West Duluth Land Co., 75 Minn. 456, 71 N. W. 1115; Benz v. St. Paul, 77 Minn. 875, 82 N. W. 1118; McCollister v. Bishop, 78 Minn. 228, 80 N. W. 1118.

Missouri: State v. Hughes, 104 Mo. 459, 16 S. W. 489; State v. Orrick, 106 Mo. 111, 17 S. W. 176, 329; State v. Kingsley, 108 Mo. 135, 13 S. W. 994; Ward v. Board of Equalization, 135 Mo. 309, 36 S. W. 648; State v. Bockstruck, 136 Mo. 335, 38 S. W. 817; State v. Firemen's Fund Ins. Co., 152 Mo. 1, 52 S. W. 595; State v. Mason, 155 Mo. 486, 55 S. W. 636; State v. Beugsch, 170 Mo. 81, 70 S. W. 710; Elting v. Hickman, 172 Mo. 237, 72 S. W. 700.

Montana: Jobb v. Meagher Co., 20 Mont. 424, 51 Pac. 1034.

Nebraska: Singer Mfg. Co. v. Fleming, 39 Neb. 679, 58 N. W. 226, 42 Am. St. Rep. 613; Bishop v. Middleton, 43 Neb. 10, 61 N. W. 129, 26 L. R. A. 445; Stoppert v. Nierle, 45 Neb. 105, 63 N. W. 382; State v. Moore, 48 Neb. 870, 67 N. W. 876; State v. Stuht, 52 Neb. 209, 71 N. W. 941; Bryant v. Dakota Co., 53 Neb. 755, 74 N. W. 313; Howard v. Supervisors, 54 Neb. 443, 74 N. W.

953, 961; Nebraska L. & B. Ass'n v. Perkins, 61 Neb. 254, 85 N. W. 67; State v. Aitken, 62 Neb. 428, 87 N. W. 153.

Nevada: State v. Ruhe, 24 Nev. 251, 52 Pac. 274.

New Jersey: Mortland v. State, 53 N. J. L. 521, 20 Atl. 673; State v. Cherry, 53 N. J. L. 173, 20 Atl. 825; State v. Wescott, 55 N. J. L. 78, 25 Atl. 269; State v. Crusins, 57 N. J. L. 279, 31 Atl. 235; Board of Education v. Cliffside Park, 63 N. J. L. 371, 43 Atl. 722; Cooper v. Springer, 65 N. J. L. 594, 48 Atl. 605; State v. Diamond Mills Paper Co., 63 N. J. Eq. 111, 51 Atl. 1019.

New York: People v. Fitch, 147 N. Y. 355, 41 N. E. 695; Perkins v. Heert, 158 N. Y. 806, 53 N. E. 18, 70 Am. St. Rep. 483, 43 L. R. A. 858; People v. Coler, 173 N. Y. 103, 65 N. E. 956; Wrought Iron Bridge Co. v. Attica, 49 Hun, 513, 2 N. Y. S. 359; Fort v. Cummins, 90 Hun, 481, 36 N. Y. S. 36; Dunton v. Hume, 15 App. Div. 122, 44 N. Y. S. 305; Potter v. Collis, 19 App. Div. 392, 46 N. Y. S. 471; Matter of Buffalo Traction Co., 25 App. Div. 447, 49 N. Y. S. 1052; Matter of Clinton Ave., 57 App. Div. 166, 68 N. Y. S. 196; People v. Kent, 88 App. Div. 554, 82 N. Y. S. 172; People v. Webster, 8 Misc. 183, 28 N. Y. S. 646.

North Dakota: State v. Haas, 2 N. D. 202, 50 N. W. 254; State v. Barnes, 3 N. D. 319, 55 N. W. 883; Tribune Print. & Binding Co. v. Barnes, 7 N. D. 591, 75 N. W. 904;

⁶⁸ Wagner v. Milwaukee County, 112 Wis. 601, 88 N. W. 577.

title "to regulate the fine and forfeiture fund of Elmore county," a provision appropriating money from the general fund of the county to the fine and forfeiture fund of the

Power v. Kitching, 10 N. D. 254, 88 N. W. 737.

Oregon: *State v. Dupuis*, 18 Ore. 372, 23 Pac. 255; *Simon v. Northup*, 27 Ore. 487, 40 Pac. 560; *Ex parte Mon Luck*, 29 Ore. 421, 44 Pac. 693, 54 Am. St. Rep. 804, 32 L. R. A. 738; *Spaulding Logging Co. v. Independence Imp. Co.*, 42 Ore. 394, 71 Pac. 132.

Pennsylvania: *Nason v. Poor Directors*, 126 Pa. St. 445, 17 Atl. 616; *Commonwealth v. Sellers*, 130 Pa. St. 32, 18 Atl. 542; *Bradley v. Pittsburgh*, 130 Pa. St. 475, 18 Atl. 730; *Clearfield Co. v. Cameron Tp.*, 135 Pa. St. 86, 19 Atl. 952; *Commonwealth v. Wyman*, 137 Pa. St. 508, 21 Atl. 389; *Commonwealth v. Morningstar*, 144 Pa. St. 103, 22 Atl. 867; *De Walt v. Bartley*, 146 Pa. St. 529, 24 Atl. 185, 28 Am. St. Rep. 814, 15 L. R. A. 771; *Donley v. Pittsburgh*, 147 Pa. St. 348, 23 Atl. 394, 30 Am. St. Rep. 738; *Kelley v. Mayberry*, 154 Pa. St. 440, 26 Atl. 595; *Commonwealth v. Railway Co.*, 162 Pa. St. 614, 29 Atl. 696; *Bruce v. Pittsburg*, 166 Pa. St. 152, 30 Atl. 831; *Gackenbach v. Lehigh Co.*, 166 Pa. St. 448, 31 Atl. 142; *Commonwealth v. Keystone Benefit Ass'n*, 171 Pa. St. 465, 32 Atl. 1027; *Grubbs' Appeal*, 174 Pa. St. 187, 34 Atl. 573; *Commonwealth v. Morgan*, 178 Pa. St. 198, 35 Atl. 589; *Commonwealth v. Lloyd*, 178 Pa. St. 308, 35 Atl. 816; *Commonwealth v. Muir*, 180 Pa. St. 47, 36 Atl. 413; *Dorrance v. Dorranceton*, 181 Pa. St. 164, 37 Atl. 200; *Otto Tp. Road*,

181 Pa. St. 390, 37 Atl. 514; *Page v. Williamsport Suspender Co.*, 191 Pa. St. 511, 43 Atl. 345; *In re Registration of Campbell*, 197 Pa. St. 581, 47 Atl. 860; *Merritt v. Whitlock*, 200 Pa. St. 50, 49 Atl. 786; *New Brighton v. Biddell*, 201 Pa. St. 96, 50 Atl. 989; *Hood v. Norton*, 202 Pa. St. 114, 51 Atl. 748; *Rose Hill Iron & C. Co. v. Fulton Co.*, 204 Pa. St. 44, 53 Atl. 530; *Franklin v. Hancock*, 204 Pa. St. 110, 53 Atl. 644; *Rose v. Beaver Co.*, 204 Pa. St. 372, 54 Atl. 263; *Hoff v. Person*, 1 Pa. Supr. Ct. 357; *Otto Tp. Road*, 2 Pa. Supr. Ct. 20; *Commonwealth v. Lloyd*, 2 Pa. Supr. Ct. 6; *Wilson v. Downing*, 4 Pa. Supr. Ct. 487; *Pittsburgh v. Daly*, 5 Pa. Supr. Ct. 528; *Shenk v. McKennon*, 11 Pa. Supr. Ct. 84; *Baker v. Warren Co.*, 11 Pa. Supr. Ct. 170; *Middletown Road*, 15 Pa. Supr. Ct. 167; *Commonwealth v. Hanley*, 15 Pa. Supr. Ct. 271; *Franklin v. Hancock*, 18 Pa. Supr. Ct. 398; *Commonwealth v. Mintz*, 19 Pa. Supr. Ct. 283; *Philadelphia v. Pepper*, 18 Phila. 419; *Sanderson v. Com'rs*, 1 Pa. Co. Ct. 342; *Commonwealth v. Baum*, 28 Pa. Co. Ct. 332; *Pittsburgh v. Kennedy*, 12 Pa. Dist. Ct. 247.

South Carolina: *Ex parte Bacot*, 36 S. C. 125, 15 S. E. 204, 16 L. R. A. 586.

South Dakota: *State v. Ayers*, 8 S. D. 517, 67 N. W. 611; *Miles v. Benton Tp.*, 11 S. D. 450, 78 N. W. 1004.

Tennessee: *Cole Mfg. Co. v. Falls*, 90 Tenn. 466, 16 S. W. 1045; *Mc-*

county was held without the title.⁶⁹ An act was entitled "An act to authorize the drainage of marsh land." It created certain persons a corporation with the usual powers, provided for its stock, management, etc., gave it power to drain and reclaim any or all of the wet or overflowed lands or tide-water marshes on or adjacent to Staten Island or Long Island, except within cities, granted to the corporation the title to all such lands when surveyed on payment of a price to be fixed, and gave it power to condemn and assess benefits. It was held that the subject was not expressed in the title and that the act was void.⁷⁰ An act "to protect fruit trees, hedge plants and fences," simply authorized the payment of a bounty for gopher scalps. It was held that the subject of the act was not expressed, though the destruction of gophers might protect trees.⁷¹ An act "to

Elwee v. McElwee, 97 Tenn. 649, 87 S. W. 560; *Kennedy v. Montgomery County*, 98 Tenn. 165, 88 S. W. 1075; *State v. McMinnville*, 106 Tenn. 384, 61 S. W. 783; *Carroll v. Alsup*, 107 Tenn. 257, 64 S. W. 193; *Phillips v. Lewis*, 3 Tenn. Cases, 230.

Texas: *Brown v. State*, 32 Tex. Crim. Rep. 119, 22 S. W. 596; *Jamerson v. State*, 82 Tex. Crim. Rep. 385, 24 S. W. 508; *Ex parte Segars*, 32 Tex. Crim. Rep. 553, 25 S. W. 26.

Virginia: *Morris v. Va. Ins. Co.*, 85 Va. 588, 8 S. E. 883; *Prison Ass'n v. Ashby*, 93 Va. 667, 25 S. E. 893.

Washington: *Jolliffe v. Brown*, 14 Wash. 155, 44 Pac. 149, 53 Am. St. Rep. 868; *Swinburn v. Mills*, 17 Wash. 611, 50 Pac. 489, 61 Am. St. Rep. 932; *Tacoma Land Co. v. Young*, 18 Wash. 495, 52 Pac. 244; *Johnston v. Wood*, 19 Wash. 441, 53 Pac. 707; *Lewis County v. Gordon*, 20 Wash. 80, 54 Pac. 779; *Merritt v. Corey*, 22 Wash. 444, 61 Pac.

171; *Grant v. Cole*, 23 Wash. 542, 63 Pac. 263.

Wisconsin: *Julien v. Model B. L. & L. Ass'n*, 116 Wis. 79, 92 N. W. 561.

Wyoming: *Farm Invest. Co. v. Carpenter*, 9 Wyo. 110, 61 Pac. 258, 87 Am. St. Rep. 918, 50 L. R. A. 747.

United States: *Knights Templars & Masons' Life Indem. Co. v. Jarman*, 187 U. S. 197, 23 S. C. Rep. 108; *Morgan v. Des Moines*, 54 Fed. 456; *Travelers' Ins. Co. v. Oswego*, 59 Fed. 58, 7 C. C. A. 669, 19 U. S. App. 821; *Preston v. Finley*, 72 Fed. 850; *Roberts v. Brooks*, 78 Fed. 411, 24 C. C. A. 158; *Picken v. Post*, 99 Fed. 659, 41 C. C. A. 1.

⁶⁹ *Sanders v. Court of County Com'rs*, 117 Ala. 543, 23 So. 788; *Pierce v. Court of County Com'rs*, 117 Ala. 569, 23 So. 790.

⁷⁰ *Core v. State*, 144 N. Y. 396, 39 N. E. 400.

⁷¹ *Clark v. Wallace Co. Com'rs*, 54 Kan. 634, 39 Pac. 225.

require the payment of a poll tax by all legal voters under sixty years of age," provided that the name of no person should be registered as a voter unless he should exhibit a receipt for the poll tax required by law for the current and preceding year. It was held that the object of the act was, not to require the payment of a poll tax, but to make its payment a condition of the right to vote, and that the real subject was not expressed in the title.⁷² An act to provide for the formation and government of sanitary districts provided that the sanitary trustees might determine the qualification of persons authorized to sell liquor at retail and that no license to sell liquor in the district should be effective until approved by the sanitary board. This was held to be foreign to the title.⁷³ An act to create a fireman's pension fund in cities having paid fire departments provided for the fund by requiring foreign insurance companies to pay one dollar on every hundred dollars of the excess of their receipts over losses paid. The act was held void because the title gave no intimation of how the fund was to be created.⁷⁴

A few additional cases are cited in the margin wherein acts or provisions were held void because not within the title.⁷⁵

⁷² *State v. Stone*, 24 Nev. 308, 53 Pac. 497.

⁷³ *In re Werner*, 129 Cal. 567, 62 Pac. 97.

⁷⁴ *Henderson v. London & L. Ins. Co.*, 135 Ind. 23, 34 N. E. 565, 41 Am. St. Rep. 410, 20 L. R. A. 827. The court says: "'Titles should distinctly recite what the particular subject of the law is.' This may often be done by language quite general; then, again, there are instances which require particularity. If the subject is composed of two or more essential elements, the expression of one of such elements in the title would not suffice. The absence of one of such elements in

the title would be as misleading, and might be as pernicious, as the evils sought to be obstructed (obviated) by the constitution. The subject of this act, as we have indicated, is to gather funds from foreign insurance companies, and to dispose of such funds for the relief of firemen. The title expresses the first of these objects included within the subject, but wholly omits the other of such objects." p. 31.

⁷⁵ *Yerby v. Cochrane*, 101 Ala. 541, 14 So. 355; *Spier v. Baker*, 120 Cal. 370, 52 Pac. 659, 41 L. R. A. 196; *Western Union Tel. Co. v. Cooledge*, 86 Ga. 104, 12 S. E. 264; *Woodruff*

§ 171. **Miscellaneous points as to titles.**— A provision for submitting an act or any question on which its operation depends to a popular vote is germane to the subject or object of such act, and is a means to facilitate its execution.⁷⁶ Where the title is to repeal an act, giving its title, it need not give the date of passage or approval of the act to be repealed.⁷⁷ Where the title is to repeal a certain section, and the act repeals and re-enacts the section, it is void.⁷⁸ Repeals by implication need not be indicated in the title.⁷⁹ Where the question was not raised in the lower court nor in the briefs, the supreme court refused to consider it.⁸⁰ Where an act, section or provision is void because not within the title, and such act, section or provision is afterwards incorporated in a code or revision, and the code or revision is duly passed under an appropriate general title, such act, section or provision will be valid from the passage of the code or revision.⁸¹ So when a territorial act is approved

v. Kellyville Coal Co., 182 Ill. 480, 55 N. E. 550; *Garrigus v. Board of Com'rs*, 157 Ind. 103, 60 N. E. 948; *State v. Goff*, 106 La. 270, 30 So. 844; *Scharf v. Tasker*, 73 Md. 378, 21 Atl. 56; *East Jordan Lumber Co. v. East Jordan*, 100 Mich. 201, 58 N. W. 1012; *State v. Oftedal*, 72 Minn. 498, 75 N. W. 692; *Sheasley v. Keens*, 48 Neb. 57, 66 N. W. 1010; *Treasurer of Plainfield v. Hall*, 61 N. J. L. 487, 39 Atl. 711; *Brown's Estate*, 152 Pa. St. 401, 25 Atl. 630; *Perkins v. Philadelphia*, 156 Pa. St. 539, 27 Atl. 856; *Perkins v. Philadelphia*, 156 Pa. St. 554, 27 Atl. 856; *Mansfield's Case*, 22 Pa. Supr. Ct. 224; *Commonwealth v. Farley*, 19 Phila. 561; *Gassett v. State*, 2 Tenn. Ch. 546; *State v. Bethel*, 3 Tenn. Ch. 107; *Case v. Loftus*, 43 Fed. 839; *Bank v. Divine Grocery Co.*, 97 Tenn. 608, 87 S. W. 390; *Luman v. Hitchens Bros. Co.*, 90 Md. 14, 44

Atl. 1051, 46 L. R. A. 398; *Kelly v. Pratt*, 14 Misc. 81, 88 N. Y. S. 636; *Potter County Water Co. v. Austin*, 206 Pa. St. 297; *Bucks County Prison Board*, 28 Pa. Co. Ct. 65; *Smith's Petition*, 12 Pa. Dist. Ct. 388.

⁷⁶ *City of Virden v. Allan*, 107 Ill. 505; *Caldwell v. Barrett*, 78 Ga. 604; *Simpson v. Bailey*, 3 Ore. 515; *Unity v. Burrage*, 103 U. S. 447, 26 L. Ed. 405; *Stuart v. Kirley*, 12 S. D. 245, 81 N. W. 147.

⁷⁷ *Moore v. Burdett*, 62 N. J. L. 163, 40 Atl. 631.

⁷⁸ *State v. Benzinger*, 88 Md. 481, 35 Atl. 178.

⁷⁹ *Union Trust Co. v. Trumbull*, 137 Ill. 146, 27 N. E. 24.

⁸⁰ *North River Boom Co. v. Smith*, 15 Wash. 138, 45 Pac. 750.

⁸¹ *Parks v. State*, 110 Ga. 760, 36 S. E. 73; *Daniel v. State*, 114 Ga. 538, 40 S. E. 707; *McFarland v. Don-*

by congress.⁸² And where a law has been duly passed with a sufficient title, it may be placed in a code or revision under any head or division the legislature choose.⁸³ A provision conferring a civil right or remedy is not void because found in a penal code.⁸⁴

The constitution of Louisiana makes provision for a general appropriation bill and requires that "all other appropriations shall be made by separate bills, each embracing but one subject."⁸⁵ An act entitled "An act making appropriations to pay deficiencies due by the state for the years 1885, 1886 and 1887," made appropriations of money to pay: (1) for the congressional election of 1887, (2) for the expense of troops in the labor strikes of 1887, (3) for the special election of June, 1885, and (4) for the special election of August, 1885. These were held to be four subjects within the constitution, and the act was held void.⁸⁶

aldson, 115 Ga. 567, 41 S. E. 1000; Newgass v. Atl. & D. Ry. Co., 56 Fed. 676.

⁸² Karasek v. Peier, 22 Wash. 419, 61 Pac. 33, 50 L. R. A. 845.

⁸³ Hennig v. Slaed, 138 Mo. 480, 40 S. W. 95.

⁸⁴ Enos v. Snyder, 131 Cal. 68, 63 Pac. 170, 82 Am. St. Rep. 330, 53 L. R. A. 221. In this case the court says: "We have here a code system which is for convenience and partial classification divided into four codes, to each of which a name is given; but they are inseparably interwoven with each other, and no one of them is complete in itself, or absolutely confined to a particular

subject. Therefore, clear enactments of substantive law establishing rights—like section 294—are not to be held inoperative because found in any particular code. If a provision in one code were in conflict with a provision on the same subject in another code, perhaps a consideration of the general purpose of each of the codes might afford some aid in solving the difficulty; but there is no such difficulty here, for there is no provision in any of the other codes touching the question here involved." p. 72.

⁸⁵ Art. 53.

⁸⁶ Klein v. State Treasurer, 42 La. Ann. 174, 7 So. 230.

CHAPTER V.

TIME OF TAKING EFFECT.

§ 172 (104). **When silent as to commencement—Date of passage.**—When no other time is fixed a statute takes effect from the date of its passage—from the date of the last act necessary to complete the process of legislation and to give a bill the force of law.¹ When approved by the executive the act of approval is the last act, and the date of it is the date of passage of the act.² If passed after a veto,

¹ *Matthews v. Zane*, 7 Wheat. 164, 211, 5 L. Ed. 425; *Louisville v. Savings Bank*, 104 U. S. 469, 26 L. Ed. 775; *Johnson v. Merchandise*, 2 Paine, 601, Fed. Cas. No. 7417; *The Brig Ann*, 1 Gall. 61, Fed. Cas. No. 397; *Heard v. Heard*, 8 Ga. 380; *Fairchild v. Gwynne*, 14 Abb. Pr. 121; *Baker v. Compton*, 52 Tex. 252; *Temple v. Hays, Morris (Iowa)*, 12; *In re Richardson*, 2 Story, 571, Fed. Cas. No. 11,777; *Roe v. Hersey*, 8 Wils. 275; *Leschi v. Washington T'y*, 1 Wash. T. 13; *Rathbone v. Bradford*, 1 Ala. (N. S.) 312; *Adm'r of Weatherford v. Weatherford*, 8 Port. 171; *People v. Clark*, 1 Cal. 406; *State v. Click*, 2 Ala. 26; *Taylor v. State*, 26 Ala. 283; *Mobile R. R. Co. v. State*, 29 id. 573; *Branch Bank v. Murphy*, 8 id. 119; *Dyer v. State*, Meigs, 237; *Logan v. State*, 8 Heisk. 442; *Day v. McGinnis*, 1 id. 310; *Dowling v. Smith*, 9 Md. 242; *Smets v. Weathersbee, R. M. Charl.* 537; *Goodsell v. Boynton*, 2 Ill. 555; *Tarlton v. Peggs*, 18 Ind. 24; *West*

v. Creditors, 1 La. Ann. 365; *Parkinson v. State*, 14 Md. 184, 74 Am. Dec. 522; *State v. Bank*, 12 Rich. L. 609; *Bassett v. United States*, 2 Ct. of Cl. 448.

² *Gardner v. The Collector*, 6 Wall. 499, 18 L. Ed. 890; *Louisville v. Savings Bank*, 104 U. S. 469, 26 L. Ed. 775; *Mead v. Bagnall*, 15 Wis. 156; *Smets v. Weathersbee, R. M. Charl.* 537; *Risewick v. Davis*, 19 Md. 82; *Baltimore & Drum Point R. R. Co. v. Pumphrey*, 74 Md. 86, 21 Atl. 559; *Matter of Kenney*, 56 Hun, 117, 9 N. Y. S. 182. In West Virginia it is held that as by the constitution, the governor does not belong to the legislative department, his approval of an act is not a legislative act and relates back to its passage by the houses, so that the date of passage is not the date of approval but the date of the final vote. *State v. Mounts*, 36 W. Va. 179, 14 S. E. 407, 15 L. R. A. 243; *State v. Scott*, 36 W. Va. 704, 15 S. E. 405. In Ohio it has been a

the date of the final vote is the date of passage. When a bill becomes a law by the non-action of the executive, under constitutional regulations, the non-action of the executive is a *quasi* approval, not complete until the lapse of the time prescribed for his affirmative action under the given conditions.

In the absence of evidence of the precise time when approved, an act operates during the whole of the day of approval.³ The constitution of Tennessee provides that no act shall become a law until, among other things which are legislative, it "be signed by the respective speakers."⁴ This signing, though thus made essential, is held not to fix the date of passage; not being legislative but ministerial in its nature, when it has been performed, the act by relation takes effect from the conclusion of the proceeding which is legislative.⁵

When no future date is fixed, the act takes effect immediately; no time is allowed for publication. There would be hardship if all acts were left so to take effect. The reason of the rule was well stated by Mr. Doddridge, of counsel, in *Matthews v. Zane*:⁶ "It being practically impossible actually to notify every person in the community of the passage of a law, whatever day might be appointed for its taking effect, no general rule could be adopted less excep-

uniform practice of long standing for the president of the senate in signing bills to affix the date preceded by the word "passed," thus: "passed, April 1, 1890," and it is held that when the "passage" of an act is referred to in legislation this date will be deemed to be the one intended. "This may be regarded," says the court, "as a legislative interpretation of the term 'passage,' when used with reference to the time when an act shall take effect; and, hence, when it is provided in a statute that it shall

take effect from and after its passage, the time of the passage of the act as fixed by the president of the senate, when he signs the same, is intended." *State v. O'Brien*, 47 Ohio St. 464, 475, 476, 25 N. E. 121.

³ *Croven v. Atlantic An. R. R. Co.*, 150 N. Y. 225, 44 N. E. 968; *Pooley v. Buffalo*, 122 N. Y. 592, 26 N. E. 16; *Mallory v. Hiles*, 4 Met. (Ky.) 58; *Matter of Carrier*, 13 Bankr. Reg. 208; *Whitehead v. Wells*, 29 Ark. 99.

⁴ Art. II, sec. 18.

⁵ *Lewis v. Woodfolk*, 58 Tenn. 25.

⁶ 7 Wheat. 179, 2 L. Ed. 654.

tionable. The general rule may, in some instances, produce hardship; but if ignorance of the law was admitted as an excuse, too wide a door would be left open for the breach of it." Where statutes are liable to produce injustice by taking immediate effect, the legislature will, except through inadvertence, appoint a future day from whence they are to be in force. Blackstone, after treating of the promulgation of laws, and the duty of legislatures to make them public, says, "all laws should therefore be made to commence *in futuro*, and be notified before their commencement, which is implied in the term prescribed."⁷

§ 173 (105). Acts of parliament formerly took effect from the first day of the session.—By the common law the parliament roll being the exclusive record of statutes, and no other date appearing than that of the beginning of the session, laws took effect from that date, when no other was provided by the act. Until the statute of 33 Geo. III, ch. 13, there was no indorsement on the roll of the day on which the bills received the royal assent, and all acts passed in the same session were considered as having received the royal assent on the same day, and were referred to the first day of the session.⁸ By the statute of 33 Geo. III. it was

⁷ 1 Black. Com. 45; 1 Kent's Com. 458; *Ship Cotton Planter*, 1 Paine, 23, Fed. Cas. No. 3270; *Cross v. Harrison*, 16 How. 196, 14 L. Ed. 889. See *Lessee of Albertson v. Robeson*, 1 Dall. 9. Yeates, J., in *Morgan v. Stell*, 5 Bin. 318, gave this statement of the case: Albertson, claiming certain lands by descent in Bucks county, brought an ejectment against Robeson for their recovery. The title of the land was clearly shown to have been at one time in the ancestor of the lessee of the plaintiff; but at a subsequent period the lands were decreed to the defendant by this

court, in pursuance of certain chancery powers delegated to them by an old act of assembly. The royal assent was refused to this law in *England*, and it so happened that the repeal *precedes* the decree of the court above two months, but the repeal was not known here when the decree was made. The court determined, upon full argument, that the unknown repeal could not affect the right of the defendant under the decree, and the jury found accordingly, and the decision gave general satisfaction to the profession.

⁸ *Rex v. Justices of Middlesex*, 2

provided that a certain parliamentary officer should indorse on every act of parliament "the day, month and year when the same shall have passed and shall have received the royal assent; and such indorsement shall be taken to be a part of such act, and to be the date of its commencement, where no other commencement shall be therein provided."

§ 174 (106). **The actual date of passage adopted in this country.**—The injustice of permitting laws to have retroactive effect by relation is so manifest that it has not had much countenance in the United States. Without departing from the rule, except by constitutional direction, that the legislative record is conclusive, statutes have not generally had effect from any date prior to their actual passage. The fiction that all laws are enacted on the first day of the legislative session is not adopted. The actual date either appears in pursuance of legislative and executive practice upon the statute itself, or it is otherwise shown by official records; and this date is popularly known and judicially recognized.⁹

In North Carolina the fiction appears to be recognized as part of the common law, and all laws take effect by relation from the first day of the session.¹⁰ Courts are bound *ex officio* to take notice as well of the time when public acts go into operation as of their provisions.¹¹ Statutes of the same session passed on different days are not to be regarded as having effect from the same day because they pertain to the same subject.¹²

§ 175 (107). **The legislature may fix a future day for an act to take effect.**—The power to enact laws includes

Barn. & Ad. 818; Panter v. Att'y General, 6 Brown, P. C. 486; Latless v. Holmes, 4 T. R. 660; Partidge v. Strange, 1 Plow. 79; King v. Thurston, 1 Lev. 91; Bac. Abr., title Statute, C.; 1 Kent's Com. 456.

⁹Turnipseed v. Jones, 101 Ala. 598, 14 So. 877.

¹⁰Hamlet v. Taylor, 5 Jones' L. 86; Weeks v. Weeks, 5 Ired. Eq. 111, 47 Am. Dec. 858. See Boston v. Cummins, 16 Ga. 102, 60 Am. Dec. 717, 722.

¹¹State v. Foote, 11 Wis. 14.

¹²Taylor v. State, 81 Ala. 883; Metropolitan Board v. Schmades, 10 Abb. Pr. (N. S.) 205.

the power, subject to constitutional restrictions, to provide when in the future, and upon what conditions or event, they shall take effect.¹³ Where a particular time for the commencement of a statute is appointed, it only begins to have effect and to speak from that time, unless a different intention is manifest,¹⁴ and will speak and operate from the beginning of that day.¹⁵ Where the provisions of a revising statute are to take effect at a future period, and the statute contains a clause repealing the former statute upon the same subject, the repealing clause will not take effect until the other provisions come into operation.¹⁶ The period between the passage of a law and the time of its going into effect is allowed to enable the public to become acquainted with its provisions; but until it becomes a law they are not compelled to govern their actions by it. Thus, an act which was to go into effect at a future day established new periods of time for the limitation of actions. It was held not applicable to a case having several years to run where the act would be a bar the moment it took effect. It could not operate to put the party on diligence before it went into

¹³ *People v. Salomon*, 51 Ill. 37; 717; *Evansville, etc. R. R. Co. v. New Orleans v. Holmes*, 13 La. Ann. 502; *Carpenter v. Montgomery*, 7 Blackf. 415; *Gorham v. Springfield*, 21 Me. 58; *Cooper v. Curtis*, 30 id. 488; *Parkinson v. State*, 14 Md. 184.

¹⁴ *Bac. Abr.*, tit. Statutes, C.; *Rice v. Ruddiman*, 10 Mich. 125; *Price v. Hopkin*, 13 Mich. 318; *Gilkey v. Cook*, 60 Wis. 133; *Jackman v. Garland*, 64 Me. 133; *Swann v. Buck*, 40 Miss. 305; *Grinad v. State*, 34 Ga. 270; *Fairchild v. Gwynne*, 14 Abb. Pr. 121; *Latless v. Holmes*, 4 T. R. 660; *Panter v. Attorney-General*, 6 Brown, P. C. 486; *Dean v. King*, 18 Ired. L. 20; *Wheeler v. Chubbuck*, 16 Ill. 361; *Boston v. Cummins*, 16 Ga. 102, 60 Am. Dec. 717; *Evansville, etc. R. R. Co. v. Barbee*, 74 Ind. 169; *Larrabee v. Talbott*, 5 Gill, 426, 46 Am. Dec. 637; *Charless v. Lamberson*, 1 Iowa, 435; *Davenport v. Railroad Co.*, 37 id. 624; *Wohlscheid v. Bergrath*, 46 Mich. 46. See *Fosdick v. Perrysburg*, 14 Ohio St. 472; *Town of Fox v. Town of Kendall*, 97 Ill. 72, 75. Upon the enactment of a new penalty for an offense, the former penalty is not superseded until the statute prescribing the new penalty takes effect. *Grinad v. State*, 34 Ga. 270.

¹⁵ *Rice v. Ruddiman*, 10 Mich. 125; *Turnipseed v. Jones*, 101 Ala. 593, 14 So. 377.

¹⁶ *Spaulding v. Alford*, 1 Pick. 33.

operation. As it gave him no future time after it became a law, it was inoperative as to that case.¹⁷

Where a general statute provides that acts shall take effect at a specified day after the adjournment of the session, it will govern all future legislation unless there is some indication of a contrary purpose.¹⁸ Acquiescence in such a statute is presumed unless dissent is shown.¹⁹ It will govern private as well as public acts.²⁰ An act may be brought into effect at an earlier day than that appointed in its provisions by an amendatory or supplemental act. Thus the Mississippi constitution provides that, if acts are silent on the time when they shall take effect, they shall go into effect sixty days after their passage. After an original act a supplemental act was passed which provided that it go into effect immediately. This provision was held to embrace and give immediate effect to the original act.²¹ A statute may be framed to take effect on the happening of a future event,²² and this event may be the passage of a law in another state.²³

§ 176 (108). Constitutional provisions regulating the time of acts taking effect—Emergency clause.—In many state constitutions are regulations of this sort: that acts shall take effect a certain number of days after their passage, or after the end of the session, unless the acts themselves otherwise provide.²⁴ In several a larger majority is

¹⁷ *Price v. Hopkin*, 13 Mich. 818. But see *Hedger v. Rennaker*, 3 Met. (Ky.) 255; *Stine v. Bennett*, 13 Minn. 153; *Smith v. Morrison*, 22 Pick. 430. See *post*, §§ 706, 707.

¹⁸ *Ross v. New England Mortg. Security Co.*, 101 Ala. 862, 18 So. 564; *Santa Cruz Water Co. v. Kron*, 74 Cal. 228, 15 Pac. 772; *Matter of Howe*, 112 N. Y. 100, 19 N. E. 513, 2 L. R. A. 825.

¹⁹ *Jackman v. Garland*, 64 Me. 133.

²⁰ *Cooper v. Curtis*, 30 Me. 488.

²¹ *West F. R. R. Co. v. Johnson*, 5 How. (Miss.) 273; *Swann v. Buck*, 40 Miss. 268.

²² *Ante*, § 96; *In re Hendricks*, 5 N. D. 114, 64 N. W. 110.

²³ 1 Am. & Eng. Corp. Cas. 1.

²⁴ *Day v. McGinnis*, 1 Heisk. 310; *Gorham v. Springfield*, 21 Me. 58; *New Portland v. New Vineyard*, 16 Me. 69.

required to give immediate effect to an act than to pass it; in others there must be some emergency to warrant it. These provisions are mandatory.²⁵ Where it is required by the constitution that an act shall declare that an emergency exists for making it take immediate effect, such declaration cannot be omitted. If the emergency clause be absent, the provision that the act take immediate effect will, under such constitutional requirement, be held void, and the act will take effect as though silent on that subject.²⁶ The emergency clause in an act passed June 14, 1852, regulating the remission of fines and forfeitures, declared the act to be in force from and after its being filed with the clerks of the circuit courts in their respective counties. It was held that the legislature intended the act to be brought into force as soon as it could be distributed in the several counties, and though there is no express direction to the secretary of state to distribute it, the emergency clause implies such a direction; it is held also that the secretary of state is to be presumed to have done his duty, and hence that the act was in force on the 20th day of December, 1852.²⁷ What may be deemed an emergency for this purpose is purely a legislative question. The courts will not inquire into it, nor entertain any question of its sufficiency.²⁸ An act which contains an emergency clause and provides that it "shall take effect and be in force from and after its approval by the governor," and on his vetoing it is passed by both houses over the veto, takes effect immediately after its passage.²⁹

Where the constitution provides that acts shall not go into effect until ninety days after the adjournment of the legislature, unless passed with an emergency clause by a two-thirds vote of all the members elected to either house, to be entered on the journals, an emergency clause will be

²⁵ *Ante*, §§ 80, 44.

²⁶ *Cain v. Goda*, 84 Ind. 209.

²⁷ *State v. Dunning*, 9 Ind. 20;
Stine v. Bennett, 13 Minn. 153.

²⁸ *Gentile v. State*, 29 Ind. 409; 11

id. 224; *Carpenter v. Montgomery*,
7 Blackf. 415.

²⁹ *Biggs v. McBride*, 17 Ora. 640,
21 Pac. 878.

ineffective unless the act is passed by the requisite vote.³⁰ Where the constitution provided that "No act shall take effect until three calendar months after the adjournment of the session at which it was passed," unless, etc., it was held that where the adjournment took effect on April 8 the act took effect on July 9.³¹ Where, in a similar constitutional provision, appropriation bills were excepted, it was held that an act to provide for the purchase, completion and furnishing of a state capitol, making an appropriation therefor, and conferring additional powers on the capitol commission, was within the exception.³² An act in regard to the deposit of public moneys by county treasurers provided that it should not go into effect until the expiration of the terms of the county treasurers in office at the time of the passage of the act. The constitution provided that acts should go into effect three months after the adjournment of the legislature. It was held that the act went into effect as a law at the end of the three months and then became operative upon the officers respectively as their terms expired.³³

§ 177. Where the constitution requires the legislature to fix the time.—The constitution of Kansas provides that "the legislature shall prescribe the *time* when its acts shall be in force." It is held by the supreme court of that state that "this provision plainly requires that the legislature shall fix a single, definite time, when its act as an entirety shall become a law,"³⁴ and that where, by the terms of an act, different parts go into effect at different times, or where it goes into effect at different times as to several persons, places or things, it is unconstitutional and void.³⁵ Where an act in relation to certain officers was to go into effect "after

³⁰ Missouri, Kan. & Tex. Ry. Co. v. McGlamory, 92 Tex. 150, 41 S. W. 466.

³¹ McGinn v. State, 46 Neb. 427, 65 N. W. 46, 50 Am. St. Rep. 617, 30 L. R. A. 450.

³² State v. Rogers, 24 Wash. 417, 64 Pac. 515.

³³ Hopkins v. Scott, 38 Neb. 661, 57 N. W. 391.

³⁴ Miami Co. Com'rs v. Hiner, 54 Kan. 334, 38 Pac. 286.

³⁵ Id.; Finnigan v. State, 54 Kan. 420, 38 Pac. 477; State v. Deets, 54 Kan. 504, 38 Pac. 798; State v. Newbold, 56 Kan. 71, 42 Pac. 345; Mont-

the present term of the officers hereinbefore named shall have expired," it was held to mean after *all* the terms had expired and so to be valid.³⁶

§ 178 (109). **Taking effect on publication.**— Where the taking effect of an act depends on publication, required by its own terms or by the constitution, it is a condition, and the time can be fixed only by the date of compliance.³⁷ The provisions of the Louisiana constitution requiring the laws to be promulgated in the English language, and in the English and French language, does not prevent the legislature from passing acts to take immediate effect.³⁸ A joint resolution of a general nature requires the same publication as any other law.³⁹ When it is provided that an act shall go into effect on publication in two newspapers, publication in one will not suffice, though officially certified to be so published.⁴⁰ When properly published it will take effect according to its own terms, although subsequently published officially in different terms. In one instance, by the later publication, the law erroneously appeared to repeal a prohibitory section of a previous law. The erroneous publication was not allowed to avail a person who had committed the act prohibited by such prior law, which was still in force. The statute, having gone into effect on its correct publication in two newspapers, was not affected by the subsequent erroneous publication.⁴¹ The publication of a statute without the enacting clause was held to be altogether ineffective.⁴² An act was to become effective upon its publication in the Iowa State Regis-

gomery Co. Com'rs v. Glass, 4 Kan. App. 286, 45 Pac. 935. While all the cases agree upon the general principle stated there seems to be some inconsistency in the application of it.

³⁶ Board of Com'rs v. Chew, 44 Kan. 162, 24 Pac. 62.

³⁷ Cain v. Goda, 84 Ind. 209; Welch v. Battern, 47 Iowa, 147.

³⁸ Thomas v. Scott, 23 La. Ann.

689; Re Merchants' Bank, 2 La. Ann. 68; State v. Judge, 14 La. Ann. 486.

³⁹ State v. School Board Fund, 4 Kan. 261.

⁴⁰ Welch v. Battern, 47 Iowa, 147.

⁴¹ Hunt v. Murray, 17 Iowa, 318; State v. Donehey, 8 Iowa, 396.

⁴² In re Swartz, 47 Kan. 157, 27 Pac. 839.

ter and the Jefferson Souvenir. There was a Souvenir published in Jefferson, but it was not called the Jefferson Souvenir. Publication in the Iowa State Register and in the Souvenir of Jefferson was held sufficient.⁴³ It has been held that a statute is in force from the precise time or hour of publication and that the court will take notice of and ascertain such time when important to the rights of parties.⁴⁴ But in Wisconsin, where an act was to take effect from and after its passage and publication, the day of publication was excluded.⁴⁵

Under a constitutional provision that "no act shall take effect until the same has been published and circulated in the several counties of this state by authority," it was held that the words "published" and "circulated" were used synonymously.⁴⁶ And no publication or circulation is good unless done by authority.⁴⁷ Under a general constitutional provision that "no general law shall be in force until published," publication of a general law by mistake only, in the volume of private laws, is a sufficient publication.⁴⁸

Though going into effect only on publication, the act of record in the office of the secretary of state is the law, when different from the published copy.⁴⁹ A law would probably not be deemed to be published, so as to give it effect, if the publication materially differed from the act of record, but a slight error would be disregarded.⁵⁰ The date of the certificate of the secretary of state, appended to a published volume of laws, will, in the absence of any suggestion which may lead to more accurate inquiry, be taken to be the date of their publication.⁵¹

⁴³ *Franklin v. Wiggins*, 110 Iowa, 702, 80 N. W. 432.

⁴⁴ *Leavenworth Coal Co. v. Barber*, 47 Kan. 29, 27 Pac. 114.

⁴⁵ *O'Connor v. Fond du Lac*, 109 Wis. 253, 85 N. W. 327, 53 L. R. A. 831.

⁴⁶ *Jones v. Cavins*, 4 Ind. 305.

⁴⁷ *Hendrickson v. Hendrickson*, 7

Ind. 13; *McCool v. State*, id. 379; *State v. Dunning*, 9 id. 20.

⁴⁸ *Re Boyle*, 9 Wis. 264.

⁴⁹ *Clare v. State*, 5 Iowa, 502. See *State v. Donehey*, 8 id. 396.

⁵⁰ *Mead v. Bagnall*, 13 Wis. 156; *Smith v. Hoyt*, 14 id. 252.

⁵¹ *State v. Foote*, 11 Wis. 14; *Boyle's Case*, 9 Wis. 264; *Berliner v. Waterloo*, 14 Wis. 378.

In the constitution of Wisconsin⁵² it is provided that "no general law shall be in force until published." The words "general law," here used, have the same meaning as public acts in their ordinary acceptation, as distinguished from private acts. The object of the prohibition was the protection of the people, by preventing their rights and interests from being affected by laws which they had no means of knowing. But all are bound by and are to take notice of public statutes.⁵³

§ 179 (110). *The precise time of taking effect—Fractions of a day.*—At what precise time does a statute go into operation, and first have force as law, when it takes immediate effect? Passing over the fiction of relation to the first day of the session which has been mentioned, there is still to be answered the question whether it takes effect at the beginning of the day of its passage, at the beginning of the next day, or at the precise moment of the last essential act in its enactment.

The maxim that the law takes no notice of the fractions of a day is not of universal application. The legal quality of an act may depend on when it was done with reference to other acts or events occurring not merely on the same day but in the same hour. Instances, in great variety, will at once occur to the professional mind. The sequence of such related facts may always be inquired into, unless the inquiry under consideration is an exception. What shall be accepted as the commencement of a period of a given number of days is an inquiry presently to be considered. That is another and different inquiry; such a period need not necessarily be computed upon fractions of a day. Any general rule as to commencement of a period of several days might operate justly. An act which is made to operate six hours before the time when it was actually enacted and passed is liable to the same objection, except in degree, as when it has a commencement six days or six years before its enact-

⁵² Sec. 21, art. VII

State ex rel. Cothren v. Lean, 9 Wis.

⁵³ Clark v. Janesville, 10 Wis. 136; 284, 285.

ment. Hardship is sometimes the result of an act taking immediate effect, and every consideration of humanity and justice is opposed to any retroaction. A statute commands only from the time it has the force of law; it should not be accorded a beginning a moment earlier than the actual time of its enactment — than the actual time of the last act in the legislative process. No person is required to anticipate the enactment of a law, though he may be charged with a knowledge of it from the moment of its adoption if it at once goes into operation.

Lord Mansfield said in *Combe v. Pitt*:⁵⁴ “Though the law does not in general allow of the fractions of a day, yet it admits it in cases where it is necessary to distinguish; and I do not see why the very hour may not be so too, where it is necessary and can be done.”

In Minnesota the day of the passage is excluded where the act provides that it shall take effect “from and after its passage.”⁵⁵ So in Wisconsin, where an act takes effect from and after its passage and publication, the day of publication is excluded.⁵⁶

There are cases which hold that acts taking immediate effect take effect from the first moment of the day on which they were passed.⁵⁷ They proceeded, however, on unsatisfactory reasons. Prentiss, J., said, in the *Matter of Welman*, “It would be as unsafe as it would be unfit to allow the commencement of a public law, whenever the question may arise, whether at a near or distant time, to depend upon the uncertainty of parol proof, or upon anything extrinsic to the law, and the authenticated recorded proceedings in passing it.” It cannot be laid down as constitutional law that the commencement of public laws must be

⁵⁴ 3 Burr. 1423.

⁵⁵ *Parkinson v. Brandenburg*, 35 Minn. 294, 28 N. W. 919. See *State v. Messmore*, 14 Wis. 163, 174.

⁵⁶ *O'Connor v. Fond du Lac*, 109 Wis. 253, 85 N. W. 327, 53 L. R. A. 831.

⁵⁷ *Tomlinson v. Bullock*, L. R. 4 Q. B. Div. 230; *Matter of Howes*, 21 Vt. 619; *Matter of Welman*, 20 id. 653; *State v. Superior Court*, 25 Wash. 271, 65 Pac. 188.

proved or provable in this manner. The legislature may make a law take effect on the happening of an event which has to be ascertained otherwise than by the "recorded proceedings in passing it." The validity of a statute cannot be judicially determined by the court's judgment of what is *safe* and *fit*.

The law takes notice of fractions of a day when necessary. The general principle declared by Lord Mansfield is believed to be sound and established by the weight of authority, that where it is necessary to justice and it can be done, the law takes notice of the parts of a day; then the precise time when an act is done may be shown.⁵⁸ This necessity exists when an act is done on the same day that a legislative act is passed, if that statute being passed afterwards should not affect such act, or, being passed before, should do so.

It was said in *Grosvenor v. Magill*:⁵⁹ "It is true that for many purposes the law knows no divisions of a day; but whenever it becomes important to the ends of justice, or in order to decide upon conflicting interests, the law will look into fractions of a day as readily as into the fractions of any other unit of time.⁶⁰ The rule is purely one of convenience, which must give way whenever the rights of parties require it. There is no indivisible unity about a day which forbids one, in legal proceedings, to consider its component hours, any more than about a month which restrains us from regarding its constituent days. The law is not made of such unreasonable and arbitrary rules." The weight of American authority is that a statute which is to go into effect immediately is operative from the instant of its passage.⁶¹

⁵⁸ *Wells v. Bright*, 4 Dev. & Batt. L. 173; *Louisville v. Savings Bank*, 104 U. S. 469, 26 L. Ed. 775; *Savage v. State*, 18 Fla. 970; *Bigelow v. Willson*, 1 Pick. 485; *Judd v. Fulton*, 10 Barb. 117; *Lang v. Phillips*, 27 Ala. 311; *Clawson v. Eichbaum*, 2 Grant's Cas. 130; *Grosvenor v. Magill*, 37 Ill.

239; *Burgess v. Salmon*, 97 U. S. 381, 24 L. Ed. 1104; *Kennedy v. Palmer*, 6 Gray, 316; *Brainard v. Bushnell*, 11 Conn. 17.

⁵⁹ 37 Ill. 239.

⁶⁰ 2 Black. Com. 140 and notes.

⁶¹ *Matter of Richardson*, 2 Story, 571, Fed. Cas. No. 11,777; *Gardner v.*

In Ohio it is held that where an act is to take effect from its passage, it means the date of signing by the president of the senate. By a uniform custom the president of the senate, in signing acts, gives the date, preceded by the word

The Collector, 6 Wall. 499, 18 L. Ed. 890; Strauss v. Heiss, 48 Md. 292; Berry v. Railroad Co., 41 id. 464, 20 Am. Rep. 69; Legg v. Mayor, etc., 42 Md. 211; Louisville v. Savings Bank, 104 U. S. 469, 26 L. Ed. 775; People v. Clark, 1 Cal. 406; Clark v. Janesville, 10 Wis. 136; Parkinson v. Brandenburg, 35 Minn. 294, 59 Am. Rep. 326; Grosvenor v. Magill, 87 Ill. 239; Burgess v. Salmon, 97 U. S. 381, 24 L. Ed. 1104; Kennedy v. Palmer, 6 Gray. 316; Fairchild v. Gwynne, 14 Abb. Pr. 121; Re Wynne, Chase's Dec. 227, Fed. Cas. No. 18,117; Osborne v. Huger, 1 Bay, 176. See King v. Moore, Jeff. (Va.) 8; Leavenworth Coal Co. v. Barber, 47 Kan. 29, 27 Pac. 114; Ottman v. Hoffman, 7 Misc. 714, 28 N. Y. S. 28; Galveston, H. & S. A. Ry. Co. v. Lynch, 22 Tex. Civ. App. 336, 55 S. W. 389.

In the Matter of Richardson, 2 Story, 571, Story, J., said: "It may not, indeed, be easy in all cases to ascertain the very *punctum temporis*; but that ought not to deprive the citizens of any rights created by antecedent laws and vesting rights in them. In cases of doubt, the time should be construed favorably for citizens. The legislature have it in their power to prescribe the very moment *in futuro* after the approval when a law shall have effect; and if it does not choose to do so, I can perceive no ground why a court of justice should be called on to supply the defect. But

when the time can be and is fully ascertained when a bill was approved, I confess I am not bold enough to say that it became a law at any antecedent period of the same day."

In Arnold v. United States, 9 Cranch, 104, 8 L. Ed. 671, it was held that an act takes effect from its passage; on the day of its passage; that it affected a transaction of that day, on the rule, that "when a computation is to be made *from an act done*, the day on which the act is done is to be included."

In Louisville v. Savings Bank, 104 U. S. 469, 478, 26 L. Ed. 775, the court, by Harlan, J., said: "In view of the authorities it cannot be doubted that the courts may, when substantial justice requires it, ascertain the precise hour when a statute took effect by the approval of the executive. But it may be argued that the rule does not apply where the inquiry is as to the time when constitutional provisions become operative by popular vote; that a popular vote, given at an election covering many hours of the same day, should be deemed an indivisible act, effectual, by relation, from the moment the electors entered upon the performance of that act, to wit: from the opening of the polls. But we are of opinion that no such distinction can be maintained. In determining when a statute took effect, no account is taken of the time it re-

“passed.” And where the final vote on such an act was taken on March 26th, and it was signed by the speaker of the house on March 31st, and sent to the senate on the same day and signed by the president of the senate on April 1st, it was held that it was not in effect until April 1st, and that acts done in pursuance of the act between March 26th and April 1st were unauthorized and void.⁶²

§ 180. **Acts approved on the same day.**—Where two acts are approved on the same day the presumption is that they were approved in numerical order;⁶³ but the court will take judicial notice of the facts and ascertain the actual order of approval,⁶⁴ and, if the two acts are inconsistent, the one last approved will prevail, though it may have been the first to pass the legislature.⁶⁵

§ 181. **Time of taking effect—Miscellaneous points and cases.**—If a particular day is named for an act to take effect, but it is not approved until after that day, its provisions, in terms prospective, will not have effect until after the date of approval.⁶⁶ And if the main and principal clause of an act is to come into operation from a day named, the other subsidiary clauses may also be held to commence from that day, though it be not so expressed, if it would be inconvenient that they should commence from the passing of

ceived the sanction of the two branches of the legislative department, which sanction is as essential to the validity of the statute as the approval of the executive. We look to the final act of approval by the executive to find when the statute took effect, and, when necessary, inquire as to the hour of the day when that approval was in fact given. So we perceive no sound reason why the courts may not, in proper cases, inquire as to the hour when such approval became effectual, to wit: as to the time when, by the closing of the

polls, the people had adopted such provision.” See *Welch v. Hannibal, etc. Ry. Co.*, 26 Mo. App. 358.

⁶² *State v. O'Brien*, 47 Ohio St. 464, 25 N. E. 121.

⁶³ *State v. Davis*, 70 Md. 287, 16 Atl. 529; *Ottman v. Hoffman*, 7 Misc. 714, 28 N. Y. S. 28.

⁶⁴ *Davis v. Whidden*, 117 Cal. 618, 49 Pac. 766; *Ottman v. Hoffman*, 7 Misc. 714, 28 N. Y. S. 28.

⁶⁵ *Davis v. Whidden*, 117 Cal. 618, 49 Pac. 766; *State v. Halliday*, 63 Ohio St. 165, 57 N. E. 1097.

⁶⁶ *Burn v. Carvalho*, 4 Nev. & M. 893.

the act.⁶⁷ Where an act passed May 16, 1894, provided that it should be in effect from May 14, 1894, it was held to be in effect from its passage.⁶⁸ It was claimed that the fixing of an impossible date was the same as fixing no date, and, therefore, that the general law would apply, fixing the date of July 4. A city charter provided that it should go into immediate effect. A general law provided that, if an act was silent on the subject, it should take effect twenty days after its approval by the governor. The charter in question was amended by substituting a new section for an old one and the amendatory act was silent as to its taking effect. It was held that the new section became subject to the provision in the charter and went into immediate effect.⁶⁹ An act may provide that some provisions shall go into effect at one time and others at another time.⁷⁰ An act was passed in 1893 to change the compensation of the clerk of Onondaga county from fees to a salary. The term of the clerk then in office expired December 31, 1894. The act provided: "This act shall take effect on the first day of January, 1895." It required the board of supervisors of the county to fix the salary prior to the election of every such clerk which occurred in the fall. The court held that it was the plain intent of the legislature that the act should apply to the clerk who took office on January 1, 1895, and that the provisions as to fixing the salary of the office were in effect before the election.⁷¹

§ 182. Where act provides for things to be done before it takes effect.—An act can have no force until it becomes a law or takes effect.⁷² By reason of inadvertence and unexpected delay in passing an act, a date which was prospective when a bill was introduced may become retrospective

⁶⁷ *Whitborn v. Evans*, 2 East, 135. Judge, 114 Mich. 655, 72 N. W. 982;

⁶⁸ *State v. Newark*, 57 N. J. L. 298, 30 Atl. 543. *Gusthal v. Strong*, 28 App. Div. 315, 48 N. Y. S. 652.

⁶⁹ *Anderson v. O'Donnell*, 29 S. C. 355, 7 S. E. 523, 13 Am. St. Rep. 728, 1 L. R. A. 632. ⁷¹ *People v. Butler*, 147 N. Y. 164, 41 N. E. 416.

⁷² *Evans v. Lumber Co.*, 21 Ohio

⁷⁰ *Osborn v. Charlevoix* Circ. C. C. 80.

by the time it is passed. Under an existing law a city treasurer was elected annually on the first Tuesday in April. Prior to the election of 1897 the legislature passed an act with an emergency clause, providing that on the first Tuesday of April, 1897, and every two years thereafter, a treasurer should be elected for a term of two years. The act was not approved until after the election of 1897. It was held that the act was merely inoperative as to the election of 1897 and that its effect was to provide for a two-year term and elections in odd years, and that the first election under the act would take place in 1899.⁷³ An act of congress in effect August 28, 1894, provided that certain duties should be collected on and after August 1. In course of the passage of the act, which was pending many months, this date was changed from June 1 to June 30 and then to August 1. The court reasons from this that the evident intent of congress was to give the public an opportunity to adjust their affairs to the provisions of the law and to make it prospective, and held that the meaning was that the duties should be collected from August 1 or as soon thereafter as the bill became a law.⁷⁴

§ 183. Meaning of words "now," "heretofore," "hereafter," "from and after the passage of this act," etc.—An act speaks from the time it takes effect.⁷⁵ The words "heretofore" and "hereafter" in an act are construed as having reference to the date of taking effect and not to the date of passage,⁷⁶ unless the act itself plainly shows a contrary intent. The supreme court of Texas says: "We apprehend that no universal rule of construction can be adopted when a statute which makes a distinction between future and past transactions is passed upon one day to take

⁷³Sipe v. People, 26 Colo. 127, 56 Pac. 571.

⁷⁵Grant v. Alpena, 107 Mich. 335, 65 N. W. 230.

⁷⁴United States v. Burr, 159 U. S. 78, 15 S. C. Rep. 1002, 40 L. Ed. 82. And see Commonwealth v. Holli-day, 98 Ky. 616, 33 S. W. 943.

⁷⁶Evansville, etc. R. R. Co. v. Barbee, 59 Ind. 592; 74 id. 171.

effect upon another, but we think the general rule is that a statute speaks from the time it becomes a law, and that what has occurred between the date of its passage and the time it took effect is deemed with respect to the statute a past transaction. This is in analogy to the rule for the construction of wills. This rule should not be applied when the language of the act shows a contrary intention.”⁷⁷

The bankrupt law enacted on the 19th day of August, 1841, was provided to take effect only from and after February 1, 1842. This was equivalent to declaring that it should have no effect until that day, and hence it did not suspend the operation of the state insolvent laws until that day.⁷⁸ The exception of injuries “already sustained” in a statute is to be construed as spoken when it took effect.⁷⁹ So of the words “prior to the passage of this act,”⁸⁰ and “after the passage of this act.”⁸¹

The Illinois corporation act of 1872 permitted the consolidation of corporations of the same kind engaged in the same business in the same vicinity, but provided that “no more than two corporations *now existing* shall be consolidated into one under the provisions hereof.” The section containing these provisions was amended and re-enacted in 1889, but the words quoted continued unchanged. It was held that the words “now existing” in the amended section related to 1872 and not to 1889.⁸² An act of 1891 relating to fees and salaries was held invalid as to county treasurers because it excepted one county from its operation. In 1893 the act was amended so as to remove this objection.

⁷⁷ Galveston, H. & S. A. R. R. Co. v. State, 81 Tex. 572, 598, 17 S. W. 408; Rogers v. Vass, 6 Iowa, 442.

⁶⁷ And see Scales v. Marshall, 96 Tex. 140, 70 S. W. 945.

⁷⁸ Larrabee v. Talbott, 5 Gill, 426.

⁷⁹ Jackman v. Garland, 64 Me. 183.

⁸⁰ Thompson v. Independent School District, 102 Iowa, 94, 70 N. W. 1098; Charless v. Lamberson, 1

⁸¹ Schneider v. Hussey, 2 Idaho, 8, 1 Pac. 343; Matter of Howe, 48 Hun, 235.

⁸² Barrows v. People's Gas Light & Coke Co., 75 Fed. 794. To same effect, Fischer v. Simon, 95 Tex. 234, 66 S. W. 447.

The original act provided that it should not apply to county treasurers elected before the taking effect of the act, and this provision remained in the act after amendment. It was held that it had reference to the time when the original act would have taken effect if valid, and that it applied to treasurers elected after the act of 1892 would have been effective, and prior to the passage of the act of 1893.⁸³ An act of the state of Maryland, passed in 1868, in regard to corporations, provided that any corporation "heretofore formed" might re-incorporate under the act. This act was incorporated into the code of 1868 and the same language was retained. It was held that the words "heretofore formed" in the code did not refer to the passage of the act of 1868, but to the passage of the code, and that a corporation organized in 1869 under the act of 1868 could re-incorporate under the code of 1888.⁸⁴

§ 184 (111). **Computation of time when an act is to take effect in a specified number of days.**—Such a computation must be made when by constitutional or statutory provision a statute is to go into operation in a specified number of days after its passage, or after the adjournment of the legislature, or is to take effect in a given time after its passage by the two houses, in the absence of executive action upon it. Periods of time are prescribed in statutes, or fixed by the common law, for three purposes: *First*, to limit the time *within* which only something may be done; *second*, to limit the time *after* which only something may be done; *third*, to fix a precise time *at* which only something may be done or commenced. The precise future time *at* which an act is appointed to be done or take effect, determinable by computation from a date or event, is in general the last point of the period; if a period of days, the last day. No fractions of a day being recognized, a period of days may for all purposes be computed by one uniform rule, unless there is, in a particular case, a different intention indicated.

⁸³Sudbury v. Board of Com'rs, 157 Ind. 446, 62 N. E. 45.

⁸⁴Erb v. Grimes, 94 Md. 92, 50 Atl. 897.

The rule now supported by nearly all of the modern cases is that the time should be computed by excluding the day or the day of the event from which the time is to be computed and including the last day of the number constituting the specified period.⁸⁵ Thus, if an act is to take effect in thirty days from and after its passage, passing on the 1st day of March, it would go into operation on the 31st day of that month. It would commence to operate at the first moment of the last day of the thirty, ascertained by adding that number to the number of the date of passage.

It is the general rule for computing time consisting of days, weeks, months or years. In such a computation days are entire days, fractions of a day being disregarded;⁸⁶ and whether the computation is from an act done, or from a day or the day of a date, the day of such act, or the day or date mentioned, is to be excluded.⁸⁷ Where a session of the leg-

⁸⁵ *Simmons v. Jacobs*, 52 Me. 147; *Bemis v. Leonard*, 118 Mass. 502; *Stebbins v. Anthony*, 5 Colo. 356; *Garner v. Johnson*, 22 Ala. 494; *Hall v. Cassidy*, 25 Miss. 48; *Mitchell v. Woodson*, 37 id. 567; *Ex parte Dillard*, 68 Ala. 594; *Hollis v. Francois*, 1 Tex. 118; *Sindall v. Baltimore*, 93 Md. 526, 49 Atl. 645; *Coe v. Caledonia, etc. R. R. Co.*, 27 Minn. 197, 6 N. W. 621; *Spencer v. Hang*, 45 Minn. 231, 47 N. W. 794; *Brady v. Moulton*, 61 Minn. 185, 63 N. W. 489; *Frazier v. Draper*, 51 Mo. App. 163; *O'Connor v. Fond du Lac*, 109 Wis. 253, 85 N. W. 327, 53 L. R. A. 831; *Williams v. Burgess*, 13 A. & E. 635; *Hardy v. Ryle*, 9 B. & C. 603; *Radcliffe v. Bartholomew*, L. R. (1892) 1 Q. B. 161.

⁸⁶ *Brown v. Buzan*, 24 Ind. 194; *Jacobs v. Graham*, 1 Blackf. 892; *Cornell v. Moulton*, 3 Denio, 12; *Griffin v. Forrest*, 49 Mich. 309, 13 N. W. 603; *Dousman v. O'Malley*, 1

Doug. (Mich.) 450; *Blake v. Crowningshield*, 9 N. H. 304; *Portland Bank v. Maine Bank*, 11 Mass. 204; *Murfree v. Carmack*, 4 Yerg. 270, 26 Am. Dec. 232; *Berry v. Clements*, 9 Humph. 312; S. C., 11 How. 398. See *Cook v. Moore*, 95 N. C. 1; *White v. Hinton*, 3 Wyo. 753, 30 Pac. 953, 17 L. R. A. 66.

⁸⁷ *Rand v. Rand*, 4 N. H. 267; *Bemis v. Leonard*, 118 Mass. 502; *Wiggin v. Peters*, 1 Met. 127; *Seekonk v. Rehoboth*, 8 Cush. 371; *Goode v. Webb*, 52 Ala. 452; *White v. Hawthorth*, 21 Mo. App. 439; *Pyle v. Maulding*, 7 J. J. Marsh. 202; *Brackett v. Brackett*, 61 Mo. 223; *Hart v. Walker*, 31 id. 26; *Walsh v. Boyle*, 30 Md. 262; *Small v. Edrick*, 5 Wend. 137; *Doyle v. Mizner*, 41 Mich. 549; *Lester v. Garland*, 15 Ves. 248; *Webb v. Fairmaner*, 8 M. & W. 473; *Ex parte Fallon*, 5 T. R. 283; *Young v. Higgon*, 6 M. & W. 49; *Protection Life v. Palmer*,

islature was limited to forty days, it was held that, at the very least, it would include forty days of twenty-four hours each, computed from the hour of convening, and where the session convened at noon on November 6, the forty days was held not to expire until December 16 at noon.⁸⁸ Where a notice is to be published *for* a certain period, it is held to mean *during* such period, and the full period must intervene between the first publication and the event, computed by excluding the day of publication and including the day of the event.⁸⁹ When a statute requires that a certain num-

81 Ill. 88; *Sheets v. Selden*, 2 Wall. 177, 17 L. Ed. 822; *Cock v. Bunn*, 6 John. 326; *Hoffman v. Duel*, 5 id. 282; *Gillespie v. White*, 16 id. 117; *Dayton v. McIntyre*, 5 How. Pr. 117; *Black v. Johns*, 68 Pa. St. 83; *Menges v. Frick*, 78 Pa. St. 137, 13 Am. Rep. 731; *Presbrey v. Williams*, 15 Mass. 193; *Bowman v. Wood*, 41 Ill. 203; *Hall v. Cassidy*, 25 Miss. 48; *Columbia T. Co. v. Haywood*, 10 Wend. 422; *Page v. Weymouth*, 47 Me. 238; *Carothers v. Wheeler*, 1 Ore. 194; *Irving v. Humphreys*, Hopk. 864; *Vanderburgh v. Van Rensselaer*, 6 Paige, 147; *Gorham v. Wing*, 10 Mich. 486; *Bigelow v. Willson*, 1 Pick. 487; *Judd v. Fulton*, 10 Barb. 117; *Snyder v. Warren*, 2 Cow. 518, 14 Am. Dec. 519; *Sims v. Hampton*, 1 S. & R. 411; *State v. Schnierle*, 5 Rich. L. 299; *Steamer Mary Blane v. Beehler*, 12 Mo. 477; *Kimm v. Osgood's Adm.*, 19 id. 60; *Windsor v. China*, 4 Greenlf. 298; *Pearpont v. Graham*, 4 Wash. C. C. 232, Fed. Cas. No. 10,877; *Cromelien v. Brink*, 29 Pa. St. 522; *Homan v. Liswell*, 6 Cow. 659; *Weeks v. Hull*, 19 Conn. 376, 50 Am. Dec. 249; *Carson v. Love*, 8 Yerg. 215; *Duffy v. Ogden*, 64 Pa. St. 240. See *Smith v. Harris*, 84 Ga. 182.

⁸⁸ *White v. Hinton*, 3 Wyo. 753, 30 Pac. 953, 17 L. R. A. 66. The court says: "In ordinary language, a day commencing at noon means a day closing at noon of the following day. The technical rule of law, making a part of a day a whole day, is not recognized as controlling legislative days. A calendar day, even, is not necessarily a legislative day. *A fortiori* a fraction of a calendar is not necessarily, or even presumptively, a legislative day. By a long established practice of congress, a calendar day is not recognized as limiting a session of any legislative day. Dating legislative proceedings of a day's session, prolonged into the morning hours of the succeeding day, as of the date when the diurnal session began, seems to have the sanction of custom in both houses of congress, and such dating is not considered either false or unlawful."

⁸⁹ *State v. Cherry County*, 58 Neb. 784, 79 N. W. 825; *Finlayson v. Peterson*, 5 N. D. 587, 67 N. W. 953, 57 Am. St. Rep. 584, 33 L. R. A. 532; *Dever v. Cornwell*, 10 N. D. 123, 86 N. W. 227.

ber of days shall intervene, elapse or expire after notice is given and before action is taken, it is complied with by excluding the day of notice and including the day on which the action is taken.⁹⁰

§ 185 (112). Some cases, both English and American, make a distinction between computations from an act done and those from the date or day of the date, including the day of the act done in the former and excluding the day of the date in the latter.⁹¹ But that distinction is not now recognized in England,⁹² and in but few of the states in this country.⁹³ The rule is not so absolute, however, but that the day of the act done may be included where it is necessary to give effect to the obvious intention; and some cases assert it will be included or excluded, as occasion may require, to prevent an estoppel or save a forfeiture.⁹⁴

⁹⁰ *Logsdon v. Logsdon*, 109 Ill. App. 194; *Forsyth v. Warren*, 62 Ill. 68; *Brown v. Chicago*, 117 Ill. 21, 7 N. E. 108.

⁹¹ *King v. Adderley*, 2 Doug. 463; *Norris v. Hundred of Gawtry*, Hob. 139; *Castle v. Burditt*, 3 T. R. 623; *Glassington v. Rawlins*, 3 East, 407; *Clayton's Case*, 5 Coke, 1; *Arnold v. United States*, 9 Cranch, 104, 3 L. Ed. 671; *Jacobs v. Graham*, 1 Blackf. 892; *White v. Crutcher*, 1 Bush, 472; *Chiles v. Smith's Heirs*, 13 B. Mon. 460; *Wood v. Commonwealth*, 11 Bush, 220.

⁹² *Lester v. Garland*, 15 Ves. 248; *Webb v. Fairmanor*, 2 M. & W. 474; *Ex parte Fallon*, 5 T. R. 283; *Young v. Higgon*, 6 M. & W. 49; *Mercer v. Ogilvy*, 3 Paton, 434; *Hardy v. Ryle*, 9 Barn. & Cr. 603; *Pellew v. Inhab. of Wonsford*, id. 134; *Rex v. Justices*, 4 Nev. & M. 878; *Robinson v. Waddington*, 13 Ad. & El. (N. S.) 753.

⁹³ *Calvert v. Williams*, 34 Md. 672;

Sheets v. Selden, 2 Wall. 177, 17 L. Ed. 822; *Owen v. Slatter*, 26 Ala. 551, 72 Am. Dec. 745; *Elder, Adm'r, v. Bradley*, 2 Sneed, 252; *Bemis v. Leonard*, 118 Mass. 502; *Sims v. Hampton*, 1 S. & R. 411; *Kimm v. Osgood*, 19 Mo. 60; *Pyle v. Maulding*, 7 J. J. Marsh. 202. In Kentucky the courts include the *terminus a quo* when the computation is from an act or event. *Chiles v. Smith's Heirs*, 13 B. Mon. 460; *Batman v. Megowan*, 1 Met. (Ky.) 548; *White v. Crutcher*, 1 Bush, 478; *Wood v. Commonwealth*, 11 id. 220; *Handley v. Cunningham*, 12 id. 402; *Mooar v. Covington City Nat. Bank*, 80 Ky. 805; *Commonwealth v. Shelton*, 99 Ky. 120, 85 S. W. 128.

⁹⁴ *Windsor v. China*, 4 Greenlf. 298; *Presbrey v. Williams*, 15 Mass. 198; *Williamson v. Farrow*, 1 Bailey, 611; *Steamboat Mary Blane v. Beehler*, 12 Mo. 477; *Pugh v. Duke of Leeds*, 2 Cowp. 714; *Price v.*

"From" is a term of exclusion,⁹⁵ and the words "to," "till" or "until," inclusive.⁹⁶ Not that they import this in all connections, but in their use to indicate the beginning and ending of spaces of time. If a given number of days is required to elapse between one act and another, the day of the first is excluded, and the day of the other included. An intention to exclude both days may be inferred from language clearly expressing that intent;⁹⁷ as where a statute or rule of court requires a certain number of clear days,⁹⁸ or as has been held when "at least" a given number of days is required.⁹⁹

The rule is so generally recognized to exclude the first, or *terminus a quo*, and to include the last, or *terminus ad quem*, that it requires no particular words for its application.¹ The *terminus a quo*, so far as it is descriptive of a period of time, is coincident with the day, or day of the act, from which the computation is to be made; that day is indivisible; the period to be computed is another and subsequent period, which begins when the first period is completed.

Whitman, 8 Cal. 412, 417; O'Connor v. Towns, 1 Tex. 107; State v. Mounts, 86 W. Va. 179, 14 S. E. 407, 15 L. R. A. 243.

⁹⁵ Peables v. Hannaford, 18 Me. 106.

⁹⁶ Thomas v. Douglass, 2 John. Cas. 226; Bunce v. Reed, 16 Barb. 347; Dakins v. Wagner, 8 Dowl. P. C. 535; Webster v. French, 12 Ill. 302. See People v. Walker, 17 N. Y. 502.

⁹⁷ Dousman v. O'Malley, 1 Doug. (Mich.) 450; Sallee v. Ireland, 9 Mich. 154; Cook v. Gray, 6 Ind. 335; Robinson, Adm'r, v. Foster, 12 Iowa, 186; Isabelle v. Iron Cliffs Co., 57 Mich. 120; Powers' Appeal, 29 Mich. 504.

⁹⁸ King v. Herefordshire, 8 Barn. & Ald. 581.

⁹⁹ Zouch v. Empey, 4 Barn. & Ald. 522; The Queen v. The Justices, etc., 8 Ad. & El. 932; In re Prangley, 4 Ad. & El. 781; O'Connor v. Towns, 1 Tex. 107; Walsh, Trustee, v. Boyle, 30 Md. 266; Small v. Edrick, 5 Wend. 187. See Columbia Tea Co. v. Haywood, 10 Wend. 423; Stebbins v. Anthony, 5 Colo. 348, 360; Young v. Higgon, 6 M. & W. 49.

¹ A rule made June 6th to plead in four days gives the party all of the 10th for that purpose. Clark v. Ewing, 87 Ill. 244; Pepperell v. Burrell, 2 Dowl. P. C. 674. "By the January 20" includes that day, Higley v. Gilmer, 8 Mont. 433, and until the office opens the next morning. Oxley v. Bridge, 1 Doug. 67.

The last day of that period is an indivisible point of time — the *terminus ad quem*. When that point is reached the period is complete. *Dies inceptus pro completo habetur*.²

§ 186 (113). Where a summons or notice is required to be served or given a specified number of days for a sale, to require appearance, or of a proceeding to take place at a precise time, the day of service is excluded; the sale or proceeding may be on the last of the required number of days, and the appearance must be on or before that day.³ The same rule applies where a period is defined to be computed from a given act or date where within such period a right, power or authority may be exercised, or beyond which such right, power or authority may immediately attach and have force. The right to appear and plead is a right so limited and defined in point of time; if not claimed and exercised within the period given therefor there is a default; this is complete on the expiration of that period, and the right of the other party to proceed thereon attaches at once on the expiration of that period. At the same point of time one right expires and another becomes operative.

§ 187 (114). The right of appeal is one to be exercised *within* a determinate period. That period is computed from

² *Mercer v. Ogilvy*, 8 Paton, 434, 442.

³ *Kerr v. Haverstick*, 94 Ind. 180; *Vandenburgh v. Van Rensselaer*, 6 Paige, 147; *Irving v. Humphreys*, Hopk. 864; *White v. German Ins. Co.*, 15 Neb. 660, 20 N. W. 30; *Monroe v. Paddock*, 75 Ind. 422; *Wash v. Boyle*, 80 Md. 262; *Bowman v. Wood*, 41 Ill. 203; *Vairin v. Edmonson*, 5 Gilm. 270; *Forsyth v. Warren*, 62 Ill. 68; *Hall v. Cassidy*, 25 Miss. 48; *Columbia T. Co. v. Haywood*, 10 Wend. 428; *Bacon v. Kennedy*, 56 Mich. 829, 22 N. W. 824; *Dexter v. Cranston*, 41 Mich. 448; *Doyle v. Mizner*, 41 Mich. 549;

Seekonk v. Rehoboth, 8 Cush. 371; *Bemis v. Leonard*, 118 Mass. 502; *Towell v. Hollweg*, 81 Ind. 154; *Cook v. Bunn*, 6 John. 826; *Hoffman v. Duel*, 5 id. 232; *Gillespie v. White*, 16 id. 117; *Cressey v. Parks*, 75 Me. 387; *Hart's Adm'r v. Walker*, 31 Mo. 26; *Rex v. Justices*, 4 Nev. & Man. 370; *City Council v. Adams*, 51 Ala. 449; *Brady v. Moulton*, 61 Minn. 185, 63 N. W. 489; *Arnold v. Nye*, 23 Mich. 286; *People v. Barry*, 98 Mich. 542, 53 N. W. 785, 18 L. R. A. 337; *Mathewson v. Ham*, 21 R. I. 203, 42 Atl. 871.

the date of the judgment. The day of the judgment is excluded in the computation.⁴ The right of redemption is another to be exercised within a certain time, and it is computed after a sale. The day of sale is excluded from the computation.⁵ The redemption period expires with the last day, and it is only after its expiration that the sale can be treated as absolute.⁶

Rights of action may be asserted during the period defined in the statutes of limitation. The rule would philosophically include in the period of limitation every day in which an action could be brought, as the rights of appeal and redemption include every day in which those rights could be exercised. The right to sue commences at once after the maturity of the debt, or right of action. The day on which it matures is excluded for the same reason that the day of sale is excluded in reckoning the time of redemption, or the day on which the judgment is rendered in computing the time for appeal. The sale or rendition of judgment are acts which do not occupy the whole day; but fractions not being regarded, they are treated the same as though they took place in every part of the day, or the day as having no magnitude, as a mere point of time.⁷

⁴ *Carothers v. Wheeler*, 1 Ore. 194; *Smith v. Cassity*, 9 B. Mon. 192, 48 Am. Dec. 420 (overruled in *Chiles v. Smith's Heirs*, 13 B. Mon. 460); *Ex parte Dean*, 2 Cow. 605, 14 Am. Dec. 521. And see *Commercial Bank v. Ives*, 2 Hill, 355.

⁵ *Gorham v. Wing*, 10 Mich. 486; *White v. Haworth*, 21 Mo. App. 439.

⁶ *People v. The Sheriff of Broome*, 19 Wend. 87; *Bigelow v. Willson*, 1 Pick. 485; *Cromilien v. Brink*, 29 Pa. St. 522. In this case the court say: "A day is always an indivisible point of time except where it must be cut up to prevent injustice. In the sense of these statutes it has neither length nor breadth,

but simply position without magnitude. If the time of redemption were fixed at one day after the sale, that day could not be the day of the sale; for it might be made at the last moment of the day, and the owner, being thus prevented from tendering on that day, would lose his right. The time mentioned must therefore be the following day. So of one year, or of two years." *Edmundson v. Wragg*, 104 Pa. St. 500.

⁷ In *Presbrey v. Williams*, 15 Mass. 192, the court say: "By the statute of limitations it was intended that the plaintiff should have full six years, and no more,

§ 188 (115). When Sundays are included or excluded.—

For secular purposes Sundays are *dies non utiles*. In many constitutions they are excepted from the time allowed the executive for action upon a bill which is delivered to him

within which to bring his action. In this case he might have brought his action on the 1st of November, as upon a new promise then made (supposing that the action had been previously barred by the statute), and if he may also commence it on the 1st day of November, 1817, it would make seven first days of November in the six years prescribed by the statute." The facts of this case and that of *Menges v. Frick*, 73 Pa. St. 137, are not such as to fairly illustrate the rule, for in both cases the right of action matured on the day included in the former and excluded in the latter in computing the period of limitations. It is said that the new promise reviving a barred debt was made on November 1, 1810, and might have been sued on that day. The new promise, like the rendition of a judgment or sale, though an act occupying but a moment, may be the first or last moment of the twenty-four hours. As a fact from which time is reckoned they occupy the day—the day is but a point of time. In reckoning a period from that act, it is considered in law that there is not a moment of the day of such act subsequent to it. The act and the day are identical in time—space—a mere point. We may suppose a new promise made which revives a debt and an action brought on it the same day; so we may suppose a redemption from a sale on the day of the

sale, or an appeal from a judgment on the day when it was rendered. Then to protect the right of suit, redemption or appeal, a court would disregard the fiction that there are no fractions of a day and ascertain if the action was brought after the right accrued, and so in the other cases whether the right exercised existed. See *ante*, § 179. *Paul v. Stone*, 112 Mass. 27, confirms this view. The statute barred an action against an administrator unless commenced within two years "from the time of his giving bond." The court adopt the language of *Wilde, J.*, in *Bigelow v. Willson*, 1 Pick. 485, that "the words 'time of executing the deed,' used in the statute, mean, in legal acceptance, the day of delivery, which is the same as 'the date' or 'the day of the date.'" The following cases are to the same effect: *Steamboat Mary Blane v. Beehler*, 12 Mo. 477; *Viti v. Dixon*, *id.* 479; *Blackman v. Nearing*, 43 Conn. 56, 21 Am. Rep. 684; *Cornell v. Moulton*, 3 Denio, 12.

The case of *McGraw v. Walker*, 2 Hilt. 404, is not like the others. There a note was payable on the 1st day of October and therefore became due on the 4th. At the expiration of that day an action accrued and suit could have been brought on the 5th. The statute commenced running on and including that day—and hence expired with the 4th of October in the sixth year thereafter—unless

after its passage by the two branches of the legislature. Where that is the case, Sundays are excluded from the computation. Thus, under such a provision in the federal constitution allowing ten days, excepting Sundays, an act so

the language of the statute of limitations excludes the first day upon which an action could be brought. It requires an action to be brought within the prescribed period "*after* the cause of action accrued." The inquiry narrowly is, Does a party have the prescribed period and *an additional* day to bring his action? It is the writer's opinion that the first day when he can bring suit is the first day after the accrual of the action and part of the prescribed period of limitation.

If the computation must be made backwards from a day or proceeding, it is still a period to be ascertained by excluding one day and including another. Though the day from which the computation has to be made is the same sort *dies a quo*, in the reckoning, it is yet the expiration of the period. The same rule of computation applies; such periods are not construed to be periods of clear days; one terminus is included and the other excluded. While it would seem more philosophical, and preserve a symmetry in the application of the rule which excludes the *terminus a quo*, as in *Hagerman v. Ohio Building, etc. Co.*, 25 Ohio St. 186, still the result is the same, when the terms are transposed. *Northrop v. Cooper*, 23 Kan. 432.

In a very learned and elaborate opinion in *Stebbins v. Anthony*, 5 Colo. 348, Beck, J., remarks that

"The rule of the common law, and the rule generally adopted by the courts of the several states, is to include one day and to exclude the other, some courts including the first day in the specified time in the computation, and excluding the last day. Some courts exclude the first day, and include the last, while other courts vary their practice according to the phraseology of the statute under consideration, in some instances including the last day, and in others including both days." He concludes that the rule sustained by the general current of modern authority is that "where a statute requires an act to be performed a certain number of days *prior* to a day named, or within a definite period after a day or event specified; or where time is to be computed either prior to a day named or subsequent to a day named, the usual rule of computation is to exclude one day of the designated period and to include the other." *Bowman v. Wood*, 41 Ill. 203; *Vairin v. Edmonson*, 5 Gilm. 270; *Forsyth v. Warren*, 62 Ill. 68; *Smith v. Rowles*, 85 Ind. 264; *Rhoades v. Delaney*, 50 Ind. 253; *Loughridge v. Huntington*, 56 Ind. 253; *Meredith v. Chancey*, 59 Ind. 466; *Fox v. Allensville*, 46 Ind. 31; *Hill v. Pressley*, 96 Ind. 447; *Swett v. Sprague*, 55 Me. 190; *Gantz v. Toles*, 40 Mich. 725; *Dexter v. Shepard*, 117 Mass. 480; *Frothingham v. March*, 1 Mass. 247; *Early v. Doe ex*

passed and submitted to the president on Saturday, the 19th of February, would, in case of his non-action, take effect on the 3d of March ensuing.⁸ In the absence of a positive written law excluding Sundays from a period of days prescribed for any purpose, they are counted, even though the period ends on Sunday.⁹ Where a period less than a week is prescribed by statute, it has sometimes been held that an intervening Sunday should not be counted, nor if it be the

dem. *Homans*, 16 How. 615, 14 L. Ed. 1079; *Dexter v. Cranston*, 41 Mich. 448, 2 N. W. 674; *Scrafford v. Gladwin Supervisors*, 41 Mich. 647; *Powers' Appeal*, 29 Mich. 504; *Bacon v. Kennedy*, 56 Mich. 329, 23 N. W. 824; *Isabelle v. Iron Cliffs Co.*, 57 Mich. 120, 23 N. W. 618.

But in *Ward v. Walters*, 63 Wis. 44, 22 N. W. 844, Taylor, J., thus states the doctrine: "In the absence of any statutory provision governing the computation of time, the authorities are uniform that where an act is required to be done a certain number of days or weeks before a certain other day upon which another act is to be done, the day upon which the first act is to be done must be excluded from the computation and the whole number of the days or weeks must intervene before the day for doing the second act." The same court, in *Wright v. Forrestal*, 65 Wis. 348, 27 N. W. 52, speaking by the same learned judge, said "The language [of the statute] is: 'The resolution shall lie over *at least four weeks after its introduction*, and no action shall be taken by the common council, if *within* that time a remonstrance,' etc. The question was presented to the council when the

four weeks expired so that they might act on the same. They evidently construed it, as men ordinarily would, that a week was the period of time, extending from Monday of one week to Monday of the next week following, and not until Tuesday of such week, and that the resolution, if introduced on Monday, had laid over four weeks when the fourth Monday thereafter had arrived, and that they were at liberty to act upon it then. We think this is the natural construction of the act, and clearly within the intention of the legislature."

⁸ See *Price v. Whitman*, 8 Cal. 412.

⁹ *Taylor v. Palmer*, 31 Cal. 244; *Miles v. McDermott*, id. 272; *Chicago v. Vulcan Iron Works*, 93 Ill. 222; *Ex parte Dodge*, 7 Cow. 147; *King v. Dowdall*, 2 Sandf. 131; *Anonymous*, 2 Hill, 375; *Harrison v. Sager*, 27 Mich. 476; *Haley v. Young*, 134 Mass. 364; *Broome v. Wellington*, 1 Sandf. 660; *Ready v. Chamberlin*, 52 How. Pr. 123; *National Bank v. Williams*, 46 Mo. 17; *Creswell v. Green*, 14 East, 587; *Ex parte Simpkin*, 105 Eng. C. L. 392; *Peacock v. Regina*, 93 id. 264; *Rowberry v. Morgan*, 9 Ex. 780. See *Harker v. Addis*, 4 Pa. St. 515; *Sims v. Hampton*, 1 S. & R. 411.

last day of the period.¹⁰ This appears to be the settled rule in Massachusetts.¹¹ It is not universally adhered to as to periods of more than one or two days.¹² Subject to this qualification, where the last day is Sunday, any act required by statute to be done within the period must be done before that day. For such acts the period practically ends on the preceding day.¹³ In Pennsylvania a different rule prevails. There, in such case, the act may be done on Monday.¹⁴

In *Hughes v. Griffiths*,¹⁵ Erle, C. J., said: "I am of opinion that when the last of the seven days [a statutory period] happens to fall on a day which is declared to be a holiday, and on which the court cannot act, the party has until the next following day on which the court can act to issue the writ. It seems to me that a distinction between a thing which is to be done by the court and a mere act of a party is maintainable."¹⁶

If the period is fixed by contract, or is a rule of court regulating mere practice, and it ends on Sunday, that day is excluded, and the period will be deemed to include Monday.¹⁷ When the time for the performance of a contract,

¹⁰ Anonymous, 2 Hill, 375; *Drake v. Andrews*, 2 Mich. 208; *National Bank v. Williams*, 46 Mo. 17; *Whipple v. Williams*, 4 How. Pr. 28; *Wathen v. Beaumont*, 11 East, 271; *Rex v. Elkins*, 4 Burr. 2130; *State v. Michel*, 52 La. Ann. 936, 27 So. 565, 78 Am. St. Rep. 364; *Diesing v. Reilly*, 77 Mo. App. 450; *Barnes v. Eddy*, 12 R. L. 25; *West v. West*, 20 R. L. 464, 40 Atl. 6.

¹¹ *Alderman v. Phelps*, 15 Mass. 225; *Thayer v. Felt*, 4 Pick. 354; *Penniman v. Cole*, 8 Met. 496; *McIniffe v. Wheelock*, 1 Gray, 600; *Hannum v. Turtellott*, 10 Allen, 494; *Cunningham v. Mahan*, 112 Mass. 58.

¹² *Harrison v. Sager*, 27 Mich. 476; *Simonson v. Durfee*, 50 Mich. 80, 14

N. W. 706; *Cressey v. Parks*, 75 Me. 387; *State v. Wheeler*, 64 id. 532; *Carvill v. Additon*, 62 id. 459; *Tuttle v. Gates*, 24 id. 395; *Hales v. Owen*, 2 Salk. 625; *Asmole v. Goodwin*, id. 624; *Creswell v. Green*, 14 East. 537; *Peacock v. Regina*, 93 Eng. C. L. 262; *Taylor v. Corbiere*, 8 How. Pr. 385.

¹³ *Ex parte Simpkin*, 105 Eng. C. L. 392; *Queen v. The Justices*, 7 Jurist, 396; *Alderman v. Phelps*, 15 Mass. 225; *Cressey v. Parks*, 75 Me. 387.

¹⁴ *Edmundson v. Wragg*, 104 Pa. St. 500, 502, 49 Am. Rep. 590.

¹⁵ 106 Eng. C. L. 332.

¹⁶ See *Harrison v. Sager*, 27 Mich. 476.

¹⁷ *Cook v. Bunn*, 6 John. 326; *Borst*

according to its terms, expires on Sunday, a performance on the following Monday is good.¹⁸ There is, however, an important exception to this rule. Where days of grace are allowed by the law merchant, and the last day of grace falls on Sunday, the act for which such days are allowed must be done on Saturday.¹⁹

v. Griffin, 5 Wend. 84; Bissell v. Bissell, 11 Barb. 96; Anonymous, 1 Strange, 86; Bullock v. Lincoln, 2 id. 914; Studley v. Sturt, id. 782; Lee v. Carlton, 3 T. R. 642; Solomons v. Freeman, 4 id. 557; Harbord v. Perigal, 5 id. 210; Asmole v. Goodwin, 2 Salk. 624; Shadwell v. Angel, 1 Burr. 56; Simonson v. Durfee, 50 Mich. 80, 14 N. W. 706; Morris v. Barrett, 97 Eng. C. L. 189; Mark's Ex'r v. Russell, 40 Pa. St. 872; Lewis v. Calor, 1 Fost. & Fin. 306; Muir v. Galloway, 61 Cal. 498. See Hughes v. Griffiths, 106 Eng. C. L. 882.

¹⁸ Hammond v. American Ins. Co., 10 Gray, 306; Salter v. Burt, 20 Wend. 205, 32 Am. Dec. 530; Avery v. Stewart, 2 Conn. 69, 7 Am. Dec. 240; Post v. Garrow, 18 Neb. 682, 26 N. W. 580. But see Kilgour v. Miles, 6 Gill & J. 268.

¹⁹ Anonymous, 2 Hill, 875; Campbell v. International Life, 4 Bosw. 817; Howard v. Ives, 1 Hill, 268; Salter v. Burt, 20 Wend. 205, 32 Am. Dec. 530.

CHAPTER VI.

REQUIREMENT OF GENERAL LAWS AND THAT THEY BE OF UNIFORM OPERATION.

§ 189 (116). The constitutional requirements.—It is the aim of the government to provide just and equal laws, and to prevent, as far as possible, enactments which are not such. The accomplishment of this purpose is in part intended to be secured by the framers of the constitutions by adopting therein certain provisions, mandatory to the legislature, prohibiting special or local laws on certain enumerated subjects, and as to all others, either where general laws exist, or where they can be made applicable.

Another provision adopted in several states requires that all laws of a general nature shall have a uniform operation throughout the state. This requirement is not confined to the subjects enumerated in the prohibition of special or local laws; nor is it a mere repetition in substance of the general injunction to pass general laws where they can be made applicable.

Laws of a general nature are those which relate to subjects of that nature, and deal generally with them. The requirement involves the question what is such a subject, and how comprehensively it must be treated in legislative acts. Laws to which the requirement is applicable must be so framed as to have a uniform operation throughout the state.

§ 190 (117). The constitutional provisions mandatory.—They are mandatory to the legislature; and a compliance with them is necessary to the validity of legislation.¹

¹ *State v. Spellmire*, 67 Ohio St. 77, 65 N. E. 619. See *Stuart v. Kirley*, 12 S. D. 245, 81 N. W. 147.

Whether a particular act is conformable or not is a judicial question; that is, the courts have power to determine it, and they will hold any act void which violates either of these regulations,² with one exception. This exception is the question whether on a non-enumerated subject, not of a general nature, a general law can be made applicable. That is a legislative question. When a special act has been passed, in such a case, it implies that in the legislative judgment a general act could not be made applicable. It is a conclusive implication, and that judgment is final; the courts will not enter at all upon the inquiry; they will accept the judgment of the legislature as exercised within its exclusive legislative domain, and give it effect.³ These re-

² Falk, *Ex parte*, 42 Ohio St. 683; 130 Ind. 434, 29 N. E. 595, 14 L. R. A. 566; Bell v. Maish, 137 Ind. 226, 36 N. E. 358; Young v. Board of Com'rs, 137 Ind. 323, 36 N. E. 1118; Pennsylvania Co. v. State, 142 Ind. 428, 41 N. E. 937; Board of Com'rs v. Brown, 147 Ind. 476, 46 N. E. 908; Smith v. Indianapolis St. Ry. Co., 158 Ind. 425, 63 N. E. 849; State v. Sanders, 42 Kan. 228, 21 Pac. 1073; Hughes v. Milligan, 42 Kan. 396, 22 Pac. 313; State v. Lewilling, 51 Kan. 562, 33 Pac. 425; Eichholtz v. Martin, 53 Kan. 486, 36 Pac. 1064; In re Greer, 58 Kan. 268, 48 Pac. 950; Chesney v. McClintock, 61 Kan. 94, 58 Pac. 993; Campbell v. Labette Co. Com'rs, 63 Kan. 377, 65 Pac. 679; Ash v. Thorp, 65 Kan. 60, 68 Pac. 1067; Edwards v. Herbrandson, 2 N. D. 270, 50 N. W. 970, 14 L. R. A. 725; Johnson v. Mocabee, 1 Okl. 204, 32 Pac. 336; Stuart v. Kireley, 12 S. D. 245, 81 N. W. 147; Guthrie Nat. Bank v. Guthrie, 173 U. S. 528, 19 S. C. Rep. 513, 43 L. Ed. 796; Travelers' Ins. Co. v. Oswego, 59 Fed. 58, 7 C. C. A. 669, 19 U. S. App. 321; Rathbone v. Kiowa

³ Gentile v. State, 29 Ind. 409; Marks v. Trustees of Purdue University, 37 id. 161; Kelly, Treasurer, v. State, 92 id. 236; State v. Tucker, 46 id. 355; State v. County Court, 50 Mo. 317, 11 Am. Rep. 415; State v. County Court, 51 Mo. 82; Hall v. Bray, id. 288; St. Louis v. Shields, 62 id. 247; Brown v. Denver, 7 Colo. 305, 3 Am. & Eng. Corp. Cas. 630; State v. Hitchcock, 1 Kan. 178; Jones v. Jones, 95 Ala. 443, 10 No. 89, 18 L. R. A. 95; Powell v. Durden, 61 Ark. 21, 31 S. W. 740; People v. McFadden, 81 Cal. 489, 22 Pac. 851, 15 Am. St. Rep. 66; People v. Mullender, 132 Cal. 217, 64 Pac. 299; Wilson v. Sanitary Trustees, 133 Ill. 443, 27 N. E. 203; Knopf v. People, 185 Ill. 20, 57 N. E. 22, 76 Am. St. Rep. 17; Sanitary District v. Ray, 199 Ill. 63, 64 N. E. 1048, 93 Am. St. Rep. 102; Mt. Vernon v. Evans & H. Fire Brick Co., 204 Ill. 32, 68 N. E. 208; State v. Kolsem,

quirements are prospective, and do not apply to or affect the validity of existing statutes.⁴ It has been held that they apply to municipalities in the passage of ordinances.⁵

§ 191 (118). When a general law on the subject is in existence.—If a general law exists which is applicable to a subject, the question whether such a law can be made applicable is resolved. The legislature has by the enactment of a general law practically decided the question. Hence if, while such a general law is in force, a special or local law is passed affecting the same subject and modifying the

Co. Com'rs, 83 Fed. 125, 27 C. C. A. 477; Seward Co. Com'rs v. *Ætna Life Ins. Co.*, 90 Fed. 222, 32 C. C. A. 585; Kearney Co. Com'rs v. *Vandries*, 115 Fed. 866, 53 C. C. A. 192.

It is held to be a judicial question in South Carolina, whose constitution provides that all its provisions shall be construed as mandatory. *Carolina Grocery Co. v. Burnet*, 61 S. C. 205, 39 S. E. 381; *State v. Hammond*, 66 S. C. 219; *State v. Hammond*, 66 S. C. 300; *State v. Brock*, 66 S. C. 357. By the Missouri constitution of 1875 this question is made judicial. It is legislative by the terms of the New York constitution, section 1, article VIII. *Mosier v. Hilton*, 15 Barb. 657; *United States Tr. Co. v. Brady*, 20 Barb. 119; *People v. Bowen*, 21 N. Y. 517, 30 Barb. 24. The New Jersey constitution in this respect is like that of New York. And see *Hess v. Pegg*, 7 Nev. 23; *Clarke v. Irwin*, 5 Nev. 124; *State v. Squires*, 26 Iowa, 340; *Krause v. Durbrow*, 127 Cal. 681, 60 Pac. 438; *Richman v. Supervisors*, 77 Iowa, 513, 42 N. W. 422, 14 Am. St. Rep. 308, 4 L. R. A. 445. In *State v. Granneman*, 182

Mo. 326, 33 S. W. 784, an act prohibiting barbering on Sunday was held void because a general law prohibiting all labor on Sunday could be made applicable.

⁴*State v. Barbee*, 3 Ind. 258; *Brown v. State*, 23 Md. 503; *Nevada School Dist. v. Shoecraft*, 88 Cal. 372, 26 Pac. 211; *Smith v. McDermott*, 93 Cal. 421, 29 Pac. 34; *Piper v. Gunther*, 95 Ky. 115, 23 S. W. 872; *O'Mahoney v. Bullock*, 97 Ky. 774, 31 S. W. 878; *Pearce v. Mason Co.*, 99 Ky. 357, 35 S. W. 1122; *Thompson v. Commonwealth*, 103 Ky. 685, 46 S. W. 698; *Black River Imp. Co. v. Holway*, 87 Wis. 584, 59 N. W. 126. But in *Travelers' Ins. Co. v. Oswego*, 59 Fed. 58, 7 C. C. A. 669, a special law to provide for compromising and refunding the bonded indebtedness of Oswego township was held valid, though a general law existed authorizing every county and township to compromise and refund its indebtedness.

⁵*Norristown v. Norristown Pass. Ry. Co.*, 148 Pa. St. 87, 23 Atl. 1060; *Tacoma v. Krech*, 15 Wash. 296, 46 Pac. 255.

general law, the question of its validity is judicial; it will be held invalid in the case supposed, for, an applicable general law being in existence, it is no longer a question whether such a law can be made applicable; therefore the special or local law is prohibited.⁶ The constitution of Georgia provides that "no special law shall be enacted in any case for which provision has been made by an existing general law."⁷ This is declaratory of the principle just announced. By virtue of this provision a special law on a subject already covered by a general law is void.⁸ A general local option law renders void a local act regulating the sale of liquor.⁹ And where a general law permits the sale of domestic wines, a local act forbidding the sale of all intoxicating liquors is void.¹⁰ Under such a constitutional provision, if no general law exists, local or special laws may be passed.¹¹ Under a similar constitutional provision in Maryland, an election law applicable to about three-fourths of the counties of the state was held valid though a general election law applicable to the whole state was in existence.¹² Where a local law is invalid when passed because in conflict with a general law on the subject, it is not made

⁶ *State ex rel. v. Supervisors*, 25 Wis. 339; *State ex rel. v. Riordan*, 24 id. 484; *Walsh v. Dousman*, 28 id. 541; *Pasadena v. Stimson*, 91 Cal. 238, 27 Pac. 604; *Crabb v. State*, 88 Ga. 584, 15 S. E. 455; *Henderson v. Koenig*, 168 Mo. 356, 68 S. W. 72; *State v. Anslinger*, 171 Mo. 600, 71 S. W. 1041; *Rathbone v. Kiowa Co. Com'rs*, 73 Fed. 395.

⁷ Const. 1877, art. 1, sec. 4.

⁸ *Smith v. State*, 90 Ga. 133, 15 S. E. 682; *Caldwell v. State*, 101 Ga. 557, 29 S. E. 263; *Bagley v. State*, 103 Ga. 388, 29 S. E. 123, 32 S. E. 414; *Aycock v. Rutledge*, 104 Ga. 533, 30 S. E. 815; *Atlanta Savings Bank v. Spencer*, 107 Ga. 629, 33 S.

E. 878; *O'Brien v. State*, 109 Ga. 51, 35 S. E. 112; *Embry v. State*, 109 Ga. 101, 35 S. E. 116; *Tinsley v. State*, 109 Ga. 822, 35 S. E. 303.

⁹ *Mathis v. Jones*, 84 Ga. 804, 11 S. E. 1018; *Camp v. Tompkins*, 84 Ga. 812, 11 S. E. 1021.

¹⁰ *Papworth v. State*, 103 Ga. 36, 31 S. E. 402; *Griffin v. Eaves*, 114 Ga. 65, 39 S. E. 913; *Harris v. State*, 114 Ga. 436, 40 S. E. 815.

¹¹ *Lorentz v. Alexander*, 87 Ga. 444, 13 S. E. 632; *Benning v. Smith*, 108 Ga. 259, 32 S. E. 823.

¹² *Lankford v. County Com'rs*, 73 Md. 105, 20 Atl. 1017, 11 L. R. A. 491.

valid by the subsequent amendment of the general law so as to avoid such conflict.¹³

The injunction to pass general laws when they can be made applicable is imperative as to subjects of a general nature, where laws of a general nature are required to have a uniform operation. The questions affecting the validity of such laws are judicial; the courts must determine what are laws of a general nature which must be so framed as to operate with uniformity.¹⁴

The enumerated subjects must be dealt with by general laws; the constitutional provision determines conclusively that they can be so dealt with. All special legislation being prohibited, no other than general laws can be valid. Under the provision prohibiting special or local laws where a general law exists which is applicable, the validity of a special or local law intended to operate in modification of an existing general law will be determined by the courts as obviously a judicial question, for it depends wholly upon judicial elements — the meaning of the constitutional provision, the scope and effect of the general law, and the sense and proposed effect of the special or local act.

§ 192 (119). **Local and special laws valid if not forbidden.**—Independently of these provisions the legislature has power to pass local and special laws. A mere want of symmetry in the legislation of a state, or the mere circumstance that all parts of a state are not subjected to the same regulations, or that statutes are not made to embrace all the subjects to which they might extend if the law-maker so desired, is no objection.¹⁵ As said by a learned author: "Laws public in their objects may, unless express constitu-

¹³ Jones v. McCaskill, 112 Ga. 453, 37 S. E. 724.

¹⁴ See *post*, § 194.

¹⁵ Lin Sing v. Washburn, 20 Cal. 534; State v. Duffy, 7 Nev. 342, 8 Am. Rep. 713; Cory v. Carter, 48 Ind. 327; Ward v. Flood, 48 Cal. 36,

17 Am. Rep. 405; State v. McCann, 21 Ohio St. 198; Merritt v. Knife Falls B. Corp'n, 34 Minn. 245; County of Hennepin v. Jones, 18 Minn. 199; Bruce v. County of Dodge, 20 id. 388.

tional provision forbids, be either general or local in their application; they may embrace many subjects or one, and they may extend to all citizens or be confined to particular classes, as minors, married women, or traders, or the like. The authority that legislates for the state at large must determine whether particular rules shall extend to the whole state and all its citizens, or, on the other hand, to a subdivision of the state, or to a single class of its citizens only.”¹⁶ Where the constitution provided that “the legislature shall have power to provide for the appointment of an additional number of justices of the peace in incorporated towns,” it was held to be an express authority to pass special laws on the subject; although the constitution contained the usual provisions as to special legislation.¹⁷

There are fundamental principles secured by all the constitutions, and elementary in the very definition of the “law of the land,” which impose restrictions upon the power to enact partial, invidious and unequal laws;¹⁸ but it would be foreign to the present purpose to enter upon that subject.

§ 193. **Peculiar provisions in South Carolina.**—The constitution of South Carolina forbids local and special laws in enumerated cases, and in all other cases where a general law can be made applicable, with a proviso “that nothing contained in this section shall prohibit the general assembly

¹⁶ Cooley's Const. Lim. 488; State v. Piper, 17 Neb. 614, 24 N. W. 204; Smith v. Dunn, 64 Cal. 164.

¹⁷ State v. Nine Justices, 90 Tenn. 722, 18 S. W. 398.

¹⁸ Lewis v. Webb, 3 Me. 326; Durham v. Lewiston, 4 id. 140; Holden v. James, 11 Mass. 396, 6 Am. Dec. 174; Bull v. Conroe, 18 Wis. 238-244; Wally v. Kennedy, 2 Yerg. 554, 24 Am. Dec. 511; Vanzant v. Waddel, 2 Yerg. 259; State Bank v. Cooper, id. 605; Ragio v. State, 86 Tenn. 272, 6 S. W. 401; Budd v. State, 3 Humph. 483, 39 Am. Dec.

189; Pope v. Phifer, 3 Heisk. 701; Mayor v. Dearmon, 2 Sneed, 121; Daly v. State, 13 Lea, 228; Burkholtz v. State, 16 id. 71; Woodard v. Brien, 14 id. 520; Memphis v. Fisher, 9 Baxt. 239; State v. Duffy, 7 Nev. 342, 8 Am. Rep. 713; Griffin v. Cunningham, 20 Gratt. 31; Dorsey v. Dorsey, 37 Md. 64, 11 Am. Rep. 528; Lawson v. Jeffries, 47 Miss. 686, 12 Am. Rep. 342; Wilder v. Railway Co., 70 Mich. 382, 88 N. W. 289; Trustees v. Bailey, 10 Fla. 238; Arnold v. Kelley, 5 W. Va. 446; Cooley, Const. L. 487.

from enacting special provisions in general laws." In construing these provisions the court has held as follows: "It is manifest from even a casual reading of the constitution, that 'local or special laws' and 'special provisions in general laws' do not mean the same thing, and that they were intended to be construed in such a manner that neither would practically destroy the force of the other. . . . In order that a law may be general it must be of force in every county in the state, and, while it may contain special provisions making its effect different in certain counties, those counties cannot be exempt from its entire operation."¹⁹

§ 194 (120). What are general laws—General principles.—The important questions, under these constitutional provisions, are: what are laws of a *general nature* which must have a uniform operation throughout the state? And what are *general laws* as distinguished from *special* and *local* laws? The descriptive term "general laws" has been in use for a long time. In the common-law classification of statutes it applies to and includes all public acts; those of which the courts take judicial notice; all except private acts. This classification will be more particularly discussed in another place. It is obvious that this term is not used in these constitutional provisions in this sense. Some cases, however, seem to have proceeded on the contrary assumption,²⁰ but I think erroneously. Public statutes may be local or special, and incapable of uniform operation throughout the state, and therefore within the purpose of these provisions. The frequency and inconvenience of such local and special legislation in public acts led to the adoption of these provisions. The enumeration of subjects as to which local or special legislation is forbidden is chiefly an enumeration of subjects upon which the prior legislation was of that char-

¹⁹ *Dean v. Spartenburg Co.*, 59 S. C. 110, 37 S. E. 226; *Nance v. Anderson*, 60 S. C. 501, 39 S. E. 5; *Carolina Grocery Co. v. Burnet*, 61 S. C. 205, 39 S. E. 381.

²⁰ *Hingle v. State*, 24 Ind. 28; *State ex rel. Stoutmeyer v. Duffy*, 7 Nev. 350, 8 Am. Rep. 713.

acter—public laws—of which courts would take judicial notice. Under these requirements it must not be by special or local but by general laws; and where the requirement of uniform operation is in force these must so operate. An act to establish a municipal court in a particular city or a particular municipal government would not be a general law, but it would be a public law.²¹ That which concerns the administration of public justice, like legislation relating to a court, though it be of limited jurisdiction and its sittings confined to a specified locality, is a public law, but local; it is a law which affects the public generally.²² It is not necessary, in order to give a statute the attributes of a public law, that it shall be equally applicable to all parts of the state,²³ nor that it extend in its operation to all of the inhabitants. "A statute may be general and yet be operative only in a particular locality."²⁴

In some constitutions it is provided that general laws shall not be in force until published. Such a provision is contained in the constitution of Wisconsin. It was there held that an act establishing a municipal court in the city of Milwaukee was a general law, and could not have effect until after publication.²⁵ The object of that provision was notice to those who must obey; hence it referred compre-

²¹ *State ex rel. Webster v. Baltimore County*, 29 Md. 516; *County Commissioners v. Commissioners*, 51 id. 465; *People v. Hill*, 8 N. Y. 449; *City Council of Montgomery v. Wright*, 72 Ala. 411, 5 Am. & Eng. Corp. Cas. 642; *Cass v. Dillon*, 2 Ohio St. 607, 617; *City of Covington v. Voskotter*, 80 Ky. 219, 3 Am. & Eng. Corp. Cas. 578; *Luling v. Racine*, 1 Biss. C. C. 316, Fed. Cas. No. 8603.

²² *People v. Davis*, 61 Barb. 456; *In re De Vaucene*, 31 How. Pr. 397; *State v. Dalon*, 35 La. Ann. 1141; *Phillips v. Mayor, etc.*, 1 Hilt. 483;

Healey v. Dudley, 5 Lana. 115; *Williams v. People*, 24 N. Y. 405; *Conner v. Mayor, etc.*, 5 id. 285; *Graves v. McWilliams*, 1 Pin. 491; *People v. McCann*, 16 N. Y. 58, 69 Am. Dec. 642; *Kerrigan v. Force*, 68 N. Y. 381; *Falk, Ex parte*, 42 Ohio St. 638.

²³ *State ex rel. Webster v. Baltimore County*, 29 Md. 516; *State v. Wilcox*, 45 Mo. 458.

²⁴ *Mt. Vernon v. Evans & H. Fire Brick Co.*, 204 Ill. 82, 68 N. E. 208.

²⁵ *In re Boyle*, 9 Wis. 264. See *Luling v. Racine*, 1 Biss. C. C. 316, Fed. Cas. No. 8603.

hensively to public laws, not merely to such as were general in distinction from local or special laws.²⁶

§ 195 (121). General laws, therefore, in this constitutional antithesis, are public laws, general in the common-law sense; but a more limited class. They are not general because they are public acts, though they are such; but general because their subject-matter is of common interest to the whole state, and not local; because the provisions embrace the whole subject, or a whole class of it. Not being confined to a part they are not partial nor special. The state contains a great variety of subjects of legislation, each requiring provisions peculiar to itself. Generic subjects may be divided and subdivided into as many classes as require this peculiar legislation. Thus laws relating to the people, for certain purposes, extend to all alike, as for protection of person and property; for other purposes they are divided into classes, as voters, sane and insane persons, minors, husbands and wives, parents and children, etc. Property is subject to division into classes. Nearly every matter of public concern is divisible, and division is necessary to methodical legislation. A statute relating to persons or things as a class is a general law; one relating to particular persons or things of a class is special.²⁷

²⁶ *Clark v. Janesville*, 10 Wis. 136; *Luling v. Racine*, 1 Biss. C. C. 316, Fed. Cas. No. 8603.

²⁷ *Dunne v. Kansas City Cable Ry. Co.*, 131 Mo. 1, 5, 32 S. W. 841; *Mo-Eldowney v. Wyatt*, 44 W. Va. 711, 30 S. E. 239, 45 L. R. A. 609; *Northern Pac. R. R. Co. v. Barnes*, 2 N. D. 310, 341, 51 N. W. 386.

In *Wheeler v. Philadelphia*, 77 Pa. St. 338, the court say that the power of classifying subjects for legislation "existed at the time of the adoption of the constitution; it had been exercised by the legislature from the foundation of the government; it was incident to

legislation, and its exercise was necessary to the promotion of the public welfare. The true question is not whether classification is authorized by the terms of the constitution, but whether it is expressly prohibited. In no part of that instrument can such prohibition be found. For the purpose of taxation real estate may be classified. Thus, timber lands, arable lands, mineral lands, urban and rural, may be divided into distinct classes, and subjected to different rates. In like manner other subjects, trades, occupations and professions may be classified. And not

Laws of a general nature are required to be made in such form that they will have a uniform operation. They must be so framed and so operate on account of being of that

only things but persons may be so divided. The *genus homo* is a subject within the meaning of the constitution. Will it be contended that as to this there can be no classification? No laws affecting the personal and property rights of minors as distinguished from adults? Or of males as distinguished from females? Or, in the case of the latter, no distinction between a *feme covert* and a single woman? What becomes of all our legislation in regard to the rights of married women if there can be no classification? And where is the power to provide any future safeguards for their separate estate? These illustrations might be multiplied indefinitely were it necessary. But it is contended that even if the right to classify exists, the exercise of it by the legislature, in this instance, is in violation of the constitution, for the reason that there is but one city in the state with a population exceeding three hundred thousand; that to form a class containing but one city is in point of fact legislating for that one city to the exclusion of all others, and constitutes the local and special legislation prohibited by the constitution. This argument is plausible, but unsound. It is true the only city in the state, at the present time, containing a population of three hundred thousand, is the city of Philadelphia. It is also true that the city of Pitts-

burg is rapidly approaching that number, if it has not already reached it, by recent enlargements of its territory.

"Legislation is intended not only to meet the wants of the present, but to provide for the future. It deals not with the past, but, in theory at least, anticipates the needs of a state, healthy with a vigorous development. It is intended to be permanent. At no distant day Pittsburg will probably become a city of the first class; and Scranton, or others of the rapidly growing interior towns, will take the place of the city of Pittsburg as a city of the second class. In the meantime, is the classification as to cities of the first class bad because Philadelphia is the only one of the class? We think not. Classification does not depend upon the numbers. The first man, Adam, was as distinctly a class, when the breath of life was breathed into him, as at any subsequent period. The word was not used to designate numbers, but a rank or order of persons or things; in society it is used to indicate equality, or persons distinguished by common characteristics, as the trading classes, the laboring classes: in science it is a division or arrangement containing the subordinate divisions of order, genus and species." See *People v. Henshaw*, 76 Cal. 436; *Pritchett v. Stanislaus Co.*, 73 Cal. 310.

general nature. In *Cass v. Dillon*,²⁸ Thurman, J., said: "The origin of this section is perfectly well known. The legislature had often made it a crime to do in one county, or even township, what it was perfectly lawful to do elsewhere; and had provided that acts, even for the punishment of offenses, should be in force or not in certain localities, as the electors thereof respectively might decide. It was to remedy this evil and prevent its recurrence that this section was framed."

In *Kelley v. State*²⁹ the court say: "Without undertaking to discriminate nicely or define with precision, it may be said that the character of a law, as general or local, depends on the character of its subject-matter. If that be of a general nature, existing throughout the state, in every county, a subject-matter in which all the citizens have a common interest — if it be a court organized under the constitution and laws within and for every county of the state, and possessing a legitimate jurisdiction over every citizen, — then the laws which relate to and regulate it are laws of a general nature, and by virtue of the prohibition referred to must have a uniform operation throughout the state." It is to be inferred from this that a law of a general nature requires a subject-matter of this extensive and all-pervading sort; and that all laws relating to and regulating it are of the same character — of a general nature. If limited in terms, so as not to extend to the whole state; that is, if the court referred to be established in only a portion of the state, not in every county, it does not have the uniform operation required. In the subsequent case of *McGill v. State*,³⁰ the subject received thorough reconsideration. The question was on the validity of a law relating to the selection of trial jurors in that court — whether the power to make such selection must be conferred on the same class of men or officers in every county. To the contention that such uniformity was required, the court said: "This posi-

²⁸ 2 Ohio St. 607, 617.

²⁹ 6 Ohio St. 269.

³⁰ 84 Ohio St. 289.

tion derives some support from what was said in *State v. Smith*. But subsequent decisions of this court, and the learned judge delivering the opinion in *Smith*, have overruled the opinion in *Smith*. It is now settled, and has been so for many years, that the proposition that a law of a general nature is not to be taken in an unequalled sense, and that a law of a general nature must cover the whole of the state, is not to be taken in an unequalled sense. That a law of a general nature must cover the whole of the state cannot be denied; for if the law of its subject-matter is not susceptible of uniform application throughout the state, it cannot, within the meaning of the constitution, be a law of a general nature. It means follows that all laws pertaining to a general subject-matter, and susceptible of a uniform application throughout the state, are laws of a general nature in the sense of that term." Such differences of opinion do not affect the constitutionality of the provision in question in the Iowa constitution. The intent was intended by such uniformity to prevent the granting to any citizen or class of citizens of any privileges or immunities which upon the face of the constitution belong to all citizens. This language in the provision in question in the Iowa constitution is not qualified by it was adopted in other states.

In California the provision was adopted in the constitution of Iowa. In *Smith v. Judge*,¹ the court said: "The language must be carefully noted. It does not mean that all laws shall be universal or general in their application to their subject, nor is it even that all laws of a general nature shall be universal or general in their application to their subject, but the expression is that these laws shall be uniform in their operation; that is, that such laws shall impose their burdens and benefits upon persons of the same category." The same court in *Smith* said: "The provision means that every law shall be uniform in its operation upon the citizens or persons of the same category."

¹Sec. 6, art. I. ²*McGill v. State*, 34 Ohio St. 111.

upon whom or which it purports to take effect, and that it shall not grant to any citizen or class of citizens privileges which, upon the same terms, shall not equally belong to all citizens.³⁴ In a still later case³⁵ that court said: "The constitution has not undertaken to declare that all laws shall have a uniform operation. Uniformity in that respect is made requisite only in case the law itself be one of a general nature. . . . The nature of a given statute, as being general or special, must depend in a measure upon the legislative purpose discernible in its enactment. We must not say that a statute, plainly special in its scope, must either have a uniform operation or not operate at all, for this were to add another to the limitations which the constitution has imposed upon the legislative power, and to hold in effect that no special act could be passed at all, at least if 'uniform' operation means universal operation."³⁶ . . . Nor are we to say that a special statute — special in its aims and in the object it has in view — is by mere construction to be converted into a general statute, because the subject with which it deals might have been made the subject of a general law. It is obvious that every law upon a general subject is not *per se*, nor by constitutional intendment, necessarily of a general nature. The subject may be general, but the law and the rule it prescribes may be special. Fees of officers, for instance, constitute a general subject, one which pervades the length and breadth of the state, and extends into every political subdivision of which it is composed; yet a statute may prescribe what these fees of office shall be in a particular county.³⁷ And may declare that they shall differ from fees established for the same official duties performed in another county. Such a law would not be a law

³⁴ French v. Teschemaker, 24 Cal. 544; Brooks v. Hyde, 37 Cal. 375.

³⁵ People v. C. P. R. R. Co., 43 Cal. 432.

³⁶ The provision requiring uniformity in the California constitution of 1849 is that "all laws of a

general nature shall have a uniform operation." Art. 1, sec. 11.

The words "throughout the state" are omitted.

³⁷ State ex rel. v. Judges, etc., 21 Ohio St. 1.

of a general nature involving the constitutional necessity of uniform operation; but it would be a special law upon a general subject.³⁸

§ 196. The question has received very careful consideration in a recent case in Minnesota. In 1887 the legislature of that state passed an act creating a commission to purchase certain land in Minneapolis and to erect thereon a court-house and city hall, to issue bonds therefor and to apportion the cost between the city and county. In 1892 the constitution was amended so as to forbid special legislation in general and in particular cases, and among others regulating the affairs of any county, city, etc. In 1893 an act was passed "to provide additional means for completing and furnishing the court-house and city hall building now in process of erection in the city of Minneapolis and to authorize the issue and sale of bonds therefor." The act covered the ground indicated by the title. In a suit involving its validity, it was conceded that the act was special, but it was claimed that it did not regulate county or city affairs. The court held otherwise. On rehearing the court held the act to be a general law; that the working out of the act of 1887 had produced a unique condition of things, which existed nowhere else and could not come into existence again under the constitution; that "no legislation more general in fact than the act of 1893 would fully meet the case," and that "if that act had been general in form, it could not be made more general in fact, and still cover the situation." In discussing the general principles applicable, the court says: "The line of demarcation between general and special laws often seems indefinite and difficult to draw; but, if the principles upon which the distinction rests are kept in mind, the difficulty is not nearly so great as it might seem. A law is general in the constitutional sense, which applies to and operates uniformly upon all members of any class of persons, places or things requiring legislation peculiar to itself in matters covered by the law; while a special law is

³⁸ Ryan v. Johnson, 5 Cal. 84.

one which relates and applies to particular members of a class, either particularized by the express terms of the act or separated by any method of selection from the whole class to which the law might, but for such limitation, be applicable."³⁹

Some further definitions by the courts of what constitutes a general law are here given: "A law, therefore, is a general law, within the meaning of the constitution, when it operates in every part of the state upon every person or transaction embraced within its terms."⁴⁰ "If the law is general, and uniform in its operation upon all persons in like circumstances, it is general in a constitutional sense, but it must operate equally and uniformly upon all brought within the relation and circumstances for which it provides. On the other hand, if it is limited to a particular branch or designated portion of such persons, it is special. Although general in its character, a law may, from the nature of the case, extend only to particular classes, such as minors, married women, laborers, bankers or common carriers. Such a law is not obnoxious to the provisions of the constitution if all persons of the class are treated alike under similar circumstances and conditions, but it is not a proper application of the definition to say that a law is general because it applies uniformly to all persons in the conditions and circumstances for which it provides, although only a particular branch of a class or some particular description of persons. If an act should attempt to confer privileges only on persons of a certain stature it could be said to apply uniformly to all people answering such description, and yet it would be absurd to say that such a law would be a general one. The classification must be so general as to bring within its limits all those who are in substan-

³⁹ *State v. Cooley*, 56 Minn. 540, Philadelphia, 156 Pa. St. 554, 27 Atl. 356; 549, 58 N. W. 150. A case quite similar in its facts arose in Pennsylvania and was differently decided. *Perkins v. Philadelphia*, 156 Pa. St. 582, 27 Atl. 356; *Perkins v.*

⁴⁰ *Union Savings Bank & Trust Co. v. Dottenheim*, 107 Ga. 606, 618, 34 S. E. 217.

tially the same situation or circumstance."⁴¹ "A law is special in the constitutional sense when, by force of an inherent limitation, it arbitrarily separates some persons, places or things from others upon which, but for such limitation, it would operate. The test of a special law is the appropriateness of its provision to the objects that it excludes. It is not, therefore, what a law includes that makes it special, but what it excludes. If nothing be excluded that should be contained the law is general. Within this distinction between a special and a general law the question in every case is whether an appropriate object is excluded to which the law, but for the limitations, would apply. If the only limitation contained in a law is a legitimate classification of its objects it is a general law. Hence, if the object of a law have characteristics so distinct as reasonably to form for the purpose legislated upon a class by itself, the law is general, notwithstanding it operates upon a single object only; for a law is not general because it operates upon every person in the state, but because every person that can be brought within its predicament becomes subject to its operation."⁴² "A 'general law,' as the term is used in this constitutional provision, is a public law of universal interest to the people of the state, and embracing within its provisions all the citizens of the state, or all of a certain class or certain classes of citizens. It must relate to persons and things as a class, and not to particular persons or things of a class. It must embrace the whole subject, or a whole class, and must not be restricted to any particular locality within the state."⁴³

Additional cases deemed especially instructive on the question of general and special laws are referred to in the margin.⁴⁴ "A special act cannot be converted into a gen-

⁴¹ *Lippman v. People*, 175 Ill. 101, 51 N. E. 872.

⁴² *Budd v. Hancock*, 66 N. J. L. 123, 135, 186, 48 Atl. 1022.

⁴³ *Northern Pac. R. R. Co. v. Barnes*, 2 N. D. 310, 341, 51 N. W. 336.

⁴⁴ *Holt v. Mayor*, 111 Ala. 369, 19 So. 735; *Southern Express Co. v. Mayor, etc.*, 132 Ala. 328, 31 So. 460; *Gilson v. Board of Com'rs*, 128 Ind. 65, 27 N. E. 285, 11 L. R. A. 835; *Consumers' Gas Trust Co. v. Harliss*, 131 Ind. 446, 29 N. E. 1062, 15

eral act by a declaration of the legislature that it shall be so considered.”⁴⁵

§ 197. What are laws of a general nature.—Laws of a general nature are such as relate to a subject of a general nature, and a subject of a general nature is one that exists or may exist throughout the state, or which affects the people of the state generally, or in which the people generally have an interest. The supreme court of Ohio says: “But how are we to determine whether a given subject is of a general nature? One way is this: if the subject does or may exist in, and affect the people of, every county in the state, it is of a general nature. On the contrary, if the subject cannot exist in or affect the people of every county, it is local or special. A subject-matter of such general nature can be regulated and legislated upon by general laws having a uniform operation throughout the state, and a subject-matter which cannot exist in or affect the people of every county cannot be regulated by general laws having a uniform operation throughout the state, because a law cannot operate where there can be no subject-matter to be operated upon.”⁴⁶

In *State v. Powers*,⁴⁷ the court held that laws regulating the organization and management of common schools, pur-

L. R. A. 505; *Mattox v. Knox*, 96 Ga. 403, 23 S. E. 307; *State v. Johnson*, 77 Minn. 458, 80 Mo. 620; *Murray v. County Com'rs*, 81 Minn. 359, 361, 84 N. W. 103; *Duluth Banking Co. v. Koon*, 81 Minn. 486, 488, 84 N. W. 6; *State v. Yancy*, 123 Mo. 391, 27 S. W. 380; *State v. Nelson*, 52 Ohio St. 88, 39 N. E. 22, 26 L. R. A. 317; *Fitzgerald v. Phelps & B. Windmill Co.*, 42 W. Va. 570, 26 S. E. 315; *Milwaukee County v. Isenring*, 109 Wis. 9, 85 N. W. 181, 53 L. R. A. 635.

⁴⁵ *People v. Central Pac. R. R. Co.*, 88 Cal. 393, 404, 23 Pac. 303.

⁴⁶ *Hixon v. Burson*, 54 Ohio St. 470, 481, 43 N. E. 1000. See also *State v. Ellet*, 47 Ohio St. 90, 23 N. E. 931, 21 Am. St. Rep. 372; *Costello v. Wyoming*, 49 Ohio St. 202, 30 N. E. 618; *State v. Nelson*, 52 Ohio St. 88, 39 N. E. 22, 26 L. R. A. 317; *Cincinnati v. Steinkamp*, 54 Ohio St. 284, 43 N. E. 490; *Gaylord v. Hubbard*, 56 Ohio St. 25, 46 N. E. 66; *Pearson v. Stevens*, 56 Ohio St. 126, 46 N. E. 511; *State v. Brown*, 60 Ohio St. 462, 54 N. E. 525; *State v. Spellmire*, 67 Ohio St. 77, 65 N. E. 619.

⁴⁷ 38 Ohio St. 54.

suant to the provisions of the constitution to "secure a thorough and efficient system of common schools throughout the state,"⁴⁸ were laws of a general nature; that if the constitution declares a given subject for legislation to be one of a general nature, all laws in relation thereto must have a uniform operation. The court expressed some diffidence in laying down any general rule for determining subjects for legislation of a general nature, but suggested as such marriage and divorce, and the descent and distribution of estates, and others of like common and general interest to all the citizens of the state. Two provisions, however, were said to be settled: 1. That the general form of a statute is not the criterion by which its general nature is to be determined. 2. That whether a law be of a general nature or not depends upon the character of its subject-matter.⁴⁹ It was admitted that on subjects concerning which uniformity was required, judicious classification and discrimination between classes were admissible. In *State v. Brown*,⁵⁰ the same court says: "If it is not true that all subjects are general which may be completely comprehended within legislation which operates uniformly throughout the state, it would be difficult indeed, and hitherto it seems to have been impossible, to state any other rule which would be consistent with the language employed by those who framed these and kindred limitations upon the exercise of legislative power, and with the purposes for which those limitations were fixed. The language employed does not suggest, if indeed it permits, a narrower rule." Taxation for county purposes is a subject of a general nature and a law relating thereto must be of uniform operation throughout the state.⁵¹

§ 198 (124). The uniform operation of laws of a general nature.— Where the subject-matter of an act is of a general

⁴⁸ Art. 6, sec. 2.

mire, 67 Ohio St. 77, 82, 65 N. E.

⁴⁹ Citing *Kelley v. State*, 6 Ohio

612.

St. 272; *McGill v. State*, 34 id. 228.

⁵¹ *Pump v. Lucas County*, 69

⁵⁰ 60 Ohio St. 462, 469, 54 N. E.

Ohio St. 448.

525. To same effect, *State v. Spell-*

nature, and a law deals with it by provisions which are designed for the whole state, and every part thereof, such act has a uniform operation throughout the state though the condition and circumstances of the state may be such as not to give the act any actual or practical operation in every part.⁵² The purpose of this provision requiring a uniform operation of general laws is satisfied when a statute has the same operation in all parts of the state under the same circumstances and conditions.⁵³ The number of persons upon whom the law shall have any direct effect may be very few by reason of the subject to which it relates, but it must operate equally and uniformly upon all brought within the relations and circumstances for which it provides.⁵⁴

"The uniform operation required by this provision," says the supreme court of North Dakota, "does not mean universal operation. A general law may be constitutional and yet operate in fact only on a very limited number of persons, or things, or within a limited territory. But, so far as it is operative, its burdens and its benefits must bear alike upon all persons and things upon which it does operate; and the statute must contain no provision that would exclude or impede this uniform operation upon all citizens, or all subjects and places, within the state, provided they were brought within the relations and circumstances specified in the act."⁵⁵

⁵² *Leavenworth Co. v. Miller*, 7 Kan. 479; *In re De Vaucene*, 31 How. Pr. 337; *Gilson v. Board of Com'rs*, 128 Ind. 65, 27 N. E. 235, 11 L. R. A. 835; *Consumers' Gas Trust Co. v. Harless*, 131 Ind. 446, 29 N. E. 1062, 15 L. R. A. 505; *Lloyd v. Dolison*, 13 Ohio C. D. 571.

⁵³ *Groesch v. State*, 42 Ind. 547; *Heanley v. State*, 74 Ind. 99; *Elder v. State*, 96 id. 162; *State v. Wilcox*, 45 Mo. 458.

⁵⁴ *People ex rel. v. Wright*, 70 Ill. 398; *People ex rel. v. Cooper*, 83 id. 585.

⁵⁵ *Northern Pac. R. R. Co. v. Barnes*, 2 N. D. 310, 341, 51 N. W. 836. *In State v. Nelson*, 52 Ohio St. 88, 98, 39 N. E. 22, 26 L. R. A. 317, the court says: "This section of the constitution requires that laws of a general nature shall have not only an operation, but a uniform operation, throughout the state: that is, the whole state, and not only in one or more counties. The operation must be uniform upon the subject-matter of the statute. It cannot operate upon the named subject in one part of the state differently

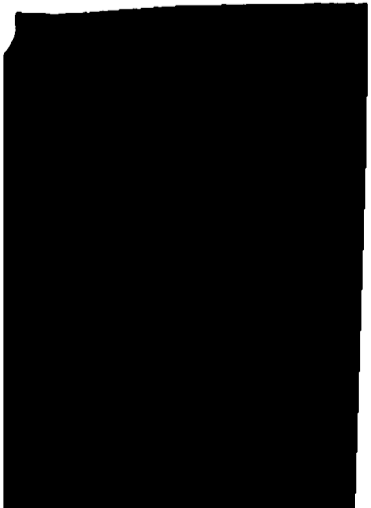
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of a class of things, present and prospective, and not merely upon one particular thing, or upon a particular class of things existing at the time of its passage, the act is general."⁶² That the question is not one of form is expressly held as necessarily implied in all the cases,⁶³ and, if this were not so, then the constitution could be easily evaded "by dressing up special laws in the garb and guise of general statutes."⁶⁴ But while in most of the adjudicated cases the laws under consideration were general in form, but were assailed as special in fact, yet in some cases laws special in form have been held to be general in fact, and the test is the same in both cases.⁶⁵

The question must be determined from the act itself and from facts of which the court will take judicial notice.⁶⁶ An act requiring every electric street car to be provided with a screen for the protection of the motorman was claimed to be special because it did not apply to all street cars, but the court held otherwise and refused to hear evidence to show that there was the same need of protection on one kind as on another.⁶⁷ The court says: "While a statute must stand or fall by its operation, rather than by its mere form, yet in passing upon the constitutionality of a statute, a court can judge of its operation only through facts of which it can take judicial notice. A court cannot take testimony to determine the operation of a statute, and thereby declare it unconstitutional. Neither can a court judicially know that a cable car, or a horse car, is so constructed and operated as to require the same means of protection for the operatives as is required on electric cars."

⁶² *Topeka v. Gillett*, 32 Kan. 431, 486, 4 Pac. 800. *leans*, 49 La. Ann. 114, 21 So. 179; *Ferguson v. Ross*, 126 N. Y. 459, 27

⁶³ *Duffy v. New Orleans*, 49 La. Ann. 114, 21 So. 179; *State v. Nelson*, 52 Ohio St. 88, 39 N. E. 22, 26 L. R. A. 317. N. E. 954; *Verges v. Milwaukee County*, 116 Wis. 191, 93 N. W. 27. And see *post*, § 215.

⁶⁴ *State v. Herrmann*, 75 Mo. 340, 37, 24 Pac. 771. ⁶⁵ *Davies v. Los Angeles*.

⁶⁶ *State v. Cooley*, 56 Minn. 540, 58 N. W. 150; *Duffy v. New Orleans*, 39 N. E. 22, 26 I.

So the question is to be determined not from the title but the body of the act. An act was entitled "An act to make the register of deeds' office of Milwaukee county a salaried office." The body of the act, as construed by the court, applied to all counties having a population of 150,000 or upwards, and was held to be a general act, though the title indicated it was local and special.⁶⁸

§ 201. Acts whose operation is dependent upon local adoption — Effect of limit of time for adoption.— An act, which is otherwise general, is not rendered local or special by a provision that it should only operate in such local subdivisions, municipal or other public corporations, as may adopt it by popular vote or otherwise.⁶⁹ But it seems manifest that such a rule must lead to diversity, and some courts hold such acts void for that reason, when they relate to a subject as to which special legislation is prohibited.⁷⁰ A Pennsylvania statute of 1874 divided all cities into three classes and provided a scheme of government for each class. A supplementary act of 1889, applicable to cities of the third class, provided a method for the control and maintenance of schools, different from the act of 1874, but it was not to apply to any city of the third class theretofore or-

⁶⁸ Verges v. Milwaukee County, 116 Wis. 191, 93 N. W. 44.

⁶⁹ People v. Kipley, 171 Ill. 44, 49 N. E. 229; People v. Simon, 176 Ill. 165, 52 N. E. 910. 68 Am. St. Rep. 175; Brown v. Holland, 97 Ky. 249, 30 S. W. 629; Maysville & Lexington T. Road Co. v. Wiggins, 104 Ky. 540, 47 S. W. 434; State v. Copeland, 66 Minn. 315, 69 N. W. 27, 61 Am. St. Rep. 410; Lum v. Vicksburg, 72 Miss. 950, 18 So. 476; State v. Pond, 93 Mo. 606, 6 S. W. 469; Ex parte Swann, 96 Mo. 44, 9 S. W. 10; State v. Moore, 107 Mo. 78, 16 S. W. 937; State v. Wingfield, 115 Mo. 428, 22 S. W. 363; In re Petition of Cleveland, 52 N. J. L. 183, 19 Atl. 17, 7 L.

R. A. 431; State v. Hudson County, 52 N. J. L. 398, 20 Atl. 255; Lloyd v. Dollisin, 13 Ohio C. D. 571; Adam v. Beloit, 105 Wis. 363, 81 N. W. 869, 47 L. R. A. 441. See *contra*, Commonwealth v. Denworth, 145 Pa. St. 172, 23 Atl. 820.

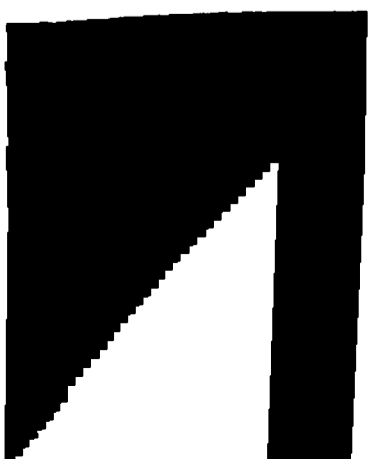
⁷⁰ Owen v. Baer, 154 Mo. 434, 55 S. W. 644; Commonwealth v. Reynolds, 137 Pa. St. 389, 20 Atl. 1011; Ward v. Boyd Paving & C. Co., 79 Fed. 390; Boyd Paving & C. Co. v. Ward, 85 Fed. 27, 28 C. C. A. 667. And see Meredith v. Perth Amboy, 60 N. J. L. 134, 36 Atl. 779; State v. Copeland, 66 Minn. 315, 69 N. W. 27, 61 Am. St. Rep. 410.

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er come into being. The effect of the limitation is a restriction of the class to which the law may be applied. It has not been suggested, and it is not perceived, that the restriction has any reasonable relation to the purpose of the enactment. On the contrary, it is impossible to consider a restrictive clause without feeling that it is illusive. To sustain it as a proper basis of classification in the present case would be to overthrow the principle so often enunciated by our courts, that it must be a characteristic which in some reasonable degree, at least, will justify the restriction, and that alone, but also to encourage a course of legislation which could, in effect, be used to nullify the constitutional provision considered, for if the limit be three months, why not, well, three days or three hours?"⁷²

In another case in the same state an act relating to county roads was not to apply in any county unless adopted by popular vote, nor unless certain steps for its submission were taken within twenty-two days after its passage. In holding the act to be special and void the court suggests a general principle, "that if the legislature selects a group of places for the possible operation of a statute, and makes its actual application, in any member of the group, conditional upon the expression therein of a sentiment favorable to the statute, such expression becomes a substantial element in the basis of classification, and the class must be kept open for the admission of any member of the group wherein the sentiment is at any time be appropriately expressed."⁷³ Similar arguments have been made where the adoption was to be made at the next municipal election after the passage of the act,⁷⁴ or within one year after its passage.⁷⁵ But where an act was only to operate in such counties as should adopt it by popular vote and required that it should be submitted at the next election for local officers, it was held that the pro-

De Hart v. Atlantic City, 68 N. J. L. 223, 48 Atl. 742.

State v. Holmes, 68 N. J. L. 192, 53 Atl. 76.

⁷⁴ *Christie v. Bayonne*, 64 N. J. L. 181, 44 Atl. 887.

⁷⁵ *Ross v. Passaic City*, 64 N. J. L. 488, 45 Atl. 817.

vision as to time of submission was directory and the act valid.⁷⁶

Enabling acts or acts conferring powers are not special because, practically, they may be availed of or acted upon in some localities and not in others.⁷⁷ But here again the right to avail of the act must not be limited in time. Thus an act to provide for the annexation of territory to cities of the second class, of which there were ten, contained a provision that it should not apply to cities of less than six thousand inhabitants, and contained other provisions the effect of which was that the act could not be availed of unless a certain notice was given within fourteen days after the passage of the act, nor unless the annexation was completed within fifty-eight days after such passage. The act was held special and void.⁷⁸ But it is held that such limitation of time is valid in a remedial act passed to relieve certain existing and temporary conditions.⁷⁹

§ 202. Class legislation.—The provision that laws of a general nature shall have a uniform operation does not alone prevent special legislation, except where, upon a subject of general concern, it would have the effect to make unjust discriminations between people or places in the same condition and circumstances; in other words, have the effect to grant to certain persons or classes privileges or immunities which, upon the same terms, are not made available to all, or which impose liabilities and burdens upon some but not upon all in the same class or condition.⁸⁰ Legislation

⁷⁶ *Albright v. Sussex Co. Lake & Park Commission*, 68 N. J. L. 523, 53 Atl. 612.

⁷⁷ *Hellman v. Shoalters*, 114 Cal. 136, 45 Pac. 1068; *State v. King*, 87 Iowa, 462; *Zumstein v. Mullen*, 67 Ohio St. 382, 66 N. E. 140; *Lehigh Valley Coal Co.'s Appeal*, 164 Pa. St. 44, 30 Atl. 210; *Middletown Road*, 15 Pa. Supr. 167; *Jermyn v. Scranton*, 186 Pa. St. 595, 40 Atl. 972.

⁷⁸ *Topeka v. Gillett*, 83 Kan. 481, 4 Pac. 800. And see *Burnham v. Milwaukee*, 98 Wis. 128, 78 N. W. 1018.

⁷⁹ *Alexander v. Duluth*, 77 Minn. 445, 80 N. W. 628; *State v. Ames*, 87 Minn. 28, 91 N. W. 18. And see *State v. Guttenberg*, 63 N. J. L. 605, 43 Atl. 708; *Herman v. Guttenberg*, 68 N. J. L. 616, 44 Atl. 758.

⁸⁰ In *McGill v. State*, 34 Ohio St.

of the latter description is known as "class legislation."⁸¹ In most cases, whether an act is a general law or not depends upon a question of classification. So whether an act is class legislation or not depends upon a question of classi-

246. the court thus discussed this distinction: "In *State ex rel. v. The Judges, etc.*, 21 Ohio St. 1, it was held that an act limiting and regulating the fees of the county officers of Hamilton county was not a law of a general but of a local nature. And in *Cass v. Dillon*, 2 Ohio St. 617, it was said that a law authorizing and requiring the commissioners to subscribe in behalf of the county to the stock of a railroad company was no more of a general nature than would be an act to authorize the construction of a bridge, or the erection of a poor-house; and yet it is perfectly clear that an act regulating the fees of county officers throughout the state pertains to a general subject-matter existing in every county, and in which all citizens have an interest, as do the general acts authorizing county commissioners to construct bridges, erect poor-houses and other necessary public buildings. And yet who would venture to question the power of the legislature to clothe the commissioners of a county, or the trustees of a township, by local enactment, with authority to provide all public buildings or structures that the local wants of a com-

munity might require; or who will contend that the power of the legislature is so circumscribed and restricted as to prohibit it from requiring a tax to be levied or a court-house to be erected in one county without requiring the same thing to be done in every county in the state? The act authorizing the judges of the court of common pleas to fix the times for holding the terms of court in their respective districts is a general law, the subject-matter of which concerns all the people throughout the state. Cannot the legislature change by local enactment the term of a court so fixed? If it may do so, it is because the act authorizing the judges to fix the time for holding the courts, although general in its terms, and relating to a subject-matter that pervades all parts of the state, is not, within the meaning and intendment of the constitution, a law of a general nature. Such laws are clearly distinguishable in their nature from those that confer privileges and immunities or impose burdens upon a citizen or class of citizens that are not upon the same terms and conditions conferred and imposed upon all. It is easy to comprehend that

⁸¹ "By class legislation, we understand such legislation as denies rights to one which are accorded to others, or inflicts upon one individual a more severe penalty than

is imposed upon another in like case offending." *People v. Bellet*, 99 Mich. 151, 153, 57 N. W. 1094, 41 Am. St. Rep. 589, 22 L. R. A. 696.

fication. And it is held that the same tests are to be applied in both cases in determining whether a proper classification has been made.⁵² For this reason the reviser has included cases on class legislation in this chapter.

§ 203. Classification of subjects for legislation — General principles.— Whether or not an act is class legislation, or whether or not it is a general or special law, depends fundamentally upon a question of classification. When an act is assailed as class or special legislation, the attack is necessarily based upon the claim that there are persons or things similarly situated to those embraced in the act, and which by the terms of the act are excluded from its operation. The question then is whether the persons or things embraced by the act form by themselves a proper and legitimate class with reference to the purposes of the act. It is agreed on all hands that the constitution does not forbid a reasonable and proper classification of the objects of legislation. The question is, what is reasonable and proper in the premises.

No definite or absolute rule can be laid down by which the question can be determined in all cases, but the question must be determined in each case as it arises, and for

a law defining burglary or bigamy, and its penalty, or regulating descent and distribution, or prescribing a rate of interest for the use of money, and others of a similar effect and operation, are laws of a general nature, requiring uniform operation throughout the state. To discriminate between localities or citizens in the enactment of laws of such nature would be to grant privileges or impose burdens of a character which it was the clear purpose of the constitution to provide against. But that a law may be general and concern matters purely local or special in their

nature, or may be local or special and relate to matter that may be made the subject of a general law, not only rests upon some reason but is well supported by authority."

⁵² *State v. Cooley*, 56 Minn. 540, 58 N. W. 150; *Julien v. Model B. L. & L. Ass'n*, 116 Wis. 70, 92 N. W. 561. In the latter case the court says: "Legislative discretion to classify persons for the purposes of legislation is substantially the same under the fourteenth amendment of the federal constitution as under the state constitutional provision prohibiting special legislation."

that case alone.⁸³ It is laid down in one case that "the test of the reasonableness of a classification is that it must be based upon some difference which bears a just and proper relation to the attempted classification, and is not a mere arbitrary selection."⁸⁴

The question was very elaborately considered in Minnesota in a case the facts of which have already been stated.⁸⁵ The court in that case lays down the following propositions: 1. "The fundamental rule is that all classification must be based upon substantial distinctions which make one class really different from another." 2. "Another rule is that the characteristics which form the basis of the classification must be germane to the purpose of the law; in other words, legislation for a class, to be general, must be confined to matters peculiar to the class. There must be an evident connection between the distinctive features to be regulated and the regulation adopted." 3. "Another rule is that to whatever class a law applies, it must apply to every member of that class." 4. "Another proposition that may be laid down as beyond question is that, if the basis of classification is valid, it is wholly immaterial how many or how few members there are in the class." 5. "The last proposition to which we will refer is that the character of an act as general or special depends on its substance, and not on its form. It may be special in fact although general in form, and it may be general in fact although special in form. The mere form is not material."⁸⁶

⁸³ *Bruch v. Colombet*, 104 Cal. 347, 352, 38 Pac. 45; *Ferguson v. Ross*, 126 N. Y. 459, 27 N. E. 954.

⁸⁴ *State v. Jacksonville Terminal Co.*, 41 Fla. 363, 374, 27 So. 221.

⁸⁵ *Ante*, § 196.

⁸⁶ *State v. Cooley*, 56 Minn. 540, 550-552, 58 N. W. 150. In a subsequent case the same court says: "A law is general and uniform in its operation which operates equally upon all subjects within the class

for which the rule is adopted, provided the classification be a proper one. The legislature, however, cannot adopt an arbitrary classification, for it must be based on some reason suggested by such difference in the situation and circumstances of the subjects placed in the different classes as to disclose the necessity or propriety of different legislation in respect thereto. Any law based upon such classification must

There has been much discussion of this subject by the courts of New Jersey. It has there received a very definite and satisfactory solution. The principles there established for classification of subjects for legislation have been generally recognized; they will probably harmonize the well-considered cases in all the states where similar constitutional regulations are in force.

In *Van Riper v. Parsons*⁸⁷ the supreme court declared this principle: that a general law, as contradistinguished from one special or local, is a law which embraces a class of subjects or places, and does not omit any subject or place naturally belonging to such class. The second time that case passed under judicial examination in the same court the holding was thus expressed: "A law framed in general terms, restricted to no locality, and operating equally upon all of a group of objects which, having regard to the purpose of the legislature, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law but a general law, without regard to the consideration that within this state there happens to be but one individual of that class, or one place where it produces effects." The statute to which the court in that case gave effect spent its force entirely in its application to one city.

This is a leading case in that state, and has been followed by many others in that state and elsewhere affirming and exemplifying it.⁸⁸

embrace all, and exclude none, whose condition and wants render such legislation necessary or appropriate to them as a class. Legislation limited in its relation to particular subdivisions of the state, to be valid, must rest on some characteristic or peculiarity plainly distinguishing the places included from those excluded." *Murray v. Board of Co. Com.*, 81 Minn. 339, 861,

84 N. W. 108; *Duluth Banking Co. v. Koon*, 81 Minn. 486, 488, 84 N. W. 6.

⁸⁷ 40 N. J. L. 123.

⁸⁸ *Board of Assessors v. Central R. R. Co.*, 48 N. J. L. 146, 4 Atl. 578; *Sutterly v. Camden Common Pleas*, 41 N. J. L. 495; *Field v. Silo*, 44 id. 855; *Hines v. Freeholders, etc.*, 45 id. 504; *Bucklew v. Railroad Co.*, 64 Iowa, 603, 21 N. W. 103; *Central Trust Co. v. Sloan*, 65 Iowa, 655;

In *Rutgers v. New Brunswick*⁸⁹ an act came in question which had the effect to abolish a court at a particular city, established under a prior general law. This prior law provided that one district court should be established in every city in the state of fifteen thousand inhabitants. New Brunswick had a population of sixteen thousand six hundred. By a supplement to this act, the original act was amended by substituting twenty thousand in the place of fifteen thousand. This amendment was held not to be a local or special law, and that it abolished the district court in that city.

An act which for the purpose of fixing the compensation of president judges classifies them into separate classes by reference to population of the counties in which they serve was sustained as a general law. The duties of such judges are well known to vary. Those located in populous counties are likely to be called on to perform more onerous duties, and their time will probably be more fully occupied. And so such a distinction, looking at the matter of fixing compensation alone, cannot be said to be in any respect illusive.⁹⁰

A law may be general in its terms, and apply to a class constituted by having characteristics which make it a class, and yet be an illusory classification which will not warrant legislation confined to it, where special or local legislation

Darrow v. People, 8 Colo. 417; *Welker v. Potter*, 18 Ohio St. 85; *People v. Wallace*, 70 Ill. 680; *State v. Hoagland*, 51 N. J. L. 62; *Bingham v. Camden*, 40 id. 156; *Pell v. Newark*, id. 71, 550, 29 Am. Rep. 266; *Rutgers v. New Brunswick*, 42 N. J. L. 51; *State ex rel. Richards v. Hammer*, id. 435; *Tiger v. Morris Pleas*, id. 631; *Worthley v. Steen*, 43 id. 542; *Bumstead v. Govern*, 47 id. 368; affirmed, 48 id. 612; *State v. Trenton*, 54 N. J. L. 444, 24 Atl. 478; *State v. Dorland*, 56 N. J. L. 364, 28 Atl. 599; *State v. Trenton*, 56 N. J. L. 469, 29 Atl. 183; *State v. Newark*, 57 N. J. L. 83, 30 Atl. 186; *Hudson County v. Clarke*, 65 N. J. L. 271, 47 Atl. 478; *Budd v. Hancock*, 66 N. J. L. 133, 48 Atl. 1023; *State v. Holmes*, 68 N. J. L. 192, 53 Atl. 76; *Albright v. Sussex Co. Lake & Park Com.*, 68 N. J. L. 523, 53 Atl. 612.

⁸⁹ 42 N. J. L. 51.

⁹⁰ *Skinner v. Collector*, 42 N. J. L. 407; *Hanlon v. Board of Commissioners*, 53 Ind. 123; *State v. Reitz, Auditor*, 62 id. 159.

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The test is, not wisdom, but good faith in the classification."⁹³

It is manifest from the foregoing discussion that the subject is a difficult one, and that opinions will frequently differ as to the character of a particular act. In many cases the court is divided and dissenting opinions are filed. In giving the opinion of the court in one such case in the supreme court of the United States, Mr. Justice Brewer says: "While cases on either side and far away from the dividing line are easy of disposition, the difficulty arises as the stat-

⁹³ *Seabolt v. Commonwealth*, 187 Pa. St. 318, 323, 41 Atl. 22.

The question of classification is particularly discussed in the following cases: *Lasher v. People*, 183 Ill. 226, 55 N. E. 663, 75 Am. St. Rep. 103, 47 L. R. A. 802; *Union Savings Bank & T. Co. v. Dottenheim*, 107 Ga. 606, 84 S. E. 217; *Simard v. Sullivan*, 71 Minn. 517, 74 N. W. 280; *State v. Sullivan*, 72 Minn. 126, 75 N. W. 8; *Duluth Banking Co. v. Koon*, 81 Minn. 486, 84 N. W. 6; *Ballard v. Miss. Cotton Oil Co.*, 81 Miss. 507, 84 So. 533; *State v. Miller*, 100 Mo. 439, 13 S. W. 677; *Dunne v. Kansas City Cable Ry. Co.*, 131 Mo. 1, 32 S. W. 641; *Owen v. Baer*, 154 Mo. 434, 55 S. W. 644; *State v. Boyd*, 19 Nev. 43, 5 Pac. 785; *Edmonds v. Herbrandson*, 2 N. D. 270, 50 N. W. 970, 14 L. R. A. 725; *Sutton v. State*, 96 Tenn. 696, 36 S. W. 697, 33 L. R. A. 589; *Clark v. Finley*, 93 Tex. 171, 54 S. W. 843; *Julien v. Model B. L. & I. Ass'n*, 116 Wis. 79, 92 N. W. 561. In the latter case the court says: "Legislative discretion to classify persons for the purposes of legislation is substantially the same under the fourteenth amendment of the federal constitution as under the state constitutional provision

prohibiting special legislation. The rules on the subject which generally prevail, and which have received the sanction of this court, are as follows: (1) All classification must be based upon substantial distinctions which make one class really different from another. (2) The classification adopted must be germane to the purposes of the law. (3) The classification must not be based upon existing conditions only; it must not be so constituted as to prevent additions to the number included within the class. (4) To whatever class a law may apply, it must apply equally to each member thereof. Whether any particular classification made by the legislature satisfies those requisites is primarily a legislative question. The field covered by its discretionary power in the matter is very broad. It is, of course, not above judicial control, but is safe from restraint so long as any reasonable ground can be discovered to support it. The court can apply no test to the matter except a constitutional test. That of the mere wisdom of the measure is exclusively for legislative consideration."

ute in question comes near the line of separation. Is the classification prescribed thereby purely arbitrary, or has it some basis in that which has a reasonable relation to the object sought to be accomplished? It is not at all to be wondered at that as these doubtful cases come before this court the justices have often divided in opinion. To some the statute presented seemed a mere arbitrary selection; to others it appeared that there was some reasonable basis of classification."⁸⁴

§ 204. Classification of municipalities according to population—California.—In this state the constitution permits of the classification of cities for the purpose of incorporation and organization, and it is held that this classification must be made by a general law, and that subsequent legislation must have reference to the classification so made. The supreme court says:

"I think it was intended that the classification there authorized was to be by a general law in the same sense and in the same way in which it was necessary to provide for the incorporation and organization of cities and towns. Legislation in regard to such corporations would thereafter be made by reference to the classes thus made. The special authority to thus classify cities and towns would also seem to imply that they cannot be otherwise classified for purposes of legislation. If they may be, and new classes created whenever it is desired by any one to procure legislation which shall apply to only a few cities of the class, the limitations of the constitution, so carefully made, and so often repeated, can be easily defeated.

"I think a law made in conformity with this special permission in the constitution must be a law classifying all cities in the state, or a law amendatory of such a law. It must leave all the municipal corporations classified."⁸⁵

⁸⁴ *Atchison, T. & S. F. R. R. Co. v. Matthews*, 174 U. S. 98, 105, 19 S. 111 Cal. 96, 43 Pac. 516, and *Ex parte Giambonini*, 117 Cal. 573, 49 C. Rep. 609, 43 L. Ed. 909.

⁸⁵ *Darcy v. San Jose*, 104 Cal. 642, 88 Pac. 500. This case has been ap-
proved in *Denman v. Broderick*, 49 Pac. 733.

A general classification law to be valid must be based upon substantial differences of population, such as may rationally be deemed to call for, or at least to justify, diversity of organization.⁹⁶ In the cases cited it is held that laws which make new classes for particular purposes connected with the organization of the municipality are void, but that new classes may be made for other purposes, if the classification is reasonable and appropriate to the purpose of the act.⁹⁷ A law applicable to cities of the fifth and sixth classes of municipalities and regulating the mode of exercising the eminent domain power was held special and void, because this is not a part of municipal organization and may be regulated by general laws applicable to all alike.⁹⁸

§ 205. *Same—Minnesota.*—Municipalities may be classified in this state according to population where there is a natural connection between the subject-matter of the proposed legislation and the number of inhabitants.⁹⁹ In 1899 the constitution was amended so as to divide cities into classes according to population and to authorize the legislature to pass general laws relating to municipal affairs and to limit their application to one class only.¹ This amendment was held not to repeal prior provisions in regard to special legislation, but simply to permit legislation confined to one of the classes without regard to any relation between the subject-matter of the law and the number of inhabitants.²

§ 206. *Same—Missouri.*—The constitution of 1875 contains the following: "The general assembly shall provide, by general laws, for the organization and classification of

⁹⁶ *Id.*

Electric & W. Co., 74 Minn. 180, 77

⁹⁷ *Rauer v. Williams*, 118 Cal. 401, 50 Pac. 691.

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¹ Const., art. 4, sec. 86.

⁹⁸ *Pasadena v. Stimson*, 91 Cal. 288, 27 Pac. 604.

² *Alexander v. Duluth*, 77 Minn. 445, 80 N. W. 623. See generally,

⁹⁹ *State v. District Court*, 61 Minn. 542, 64 N. W. 190; *McCormick v. West Duluth*, 47 Minn. 272, 50 N. W. 128; *Flynn v. Little Falls*

State v. Johnson, 77 Minn. 453, 80 N. W. 620; *State v. Minor*, 79 Minn. 201, 81 N. W. 912.

cities and towns. The number of succeed four; and the power of each class general laws, so that all such municipalities of the same class shall possess the same powers and be subject to the same restrictions."³ Pursuant to the act the legislature divided the cities and towns into four classes as follows: 1. Those having a population of less than 10,000; 2. Those having 10,000 to 30,000; 3. Those having 30,000 to 100,000; 4. Those having 100,000 to 3,000,000. The act also made provision by which St. Louis might frame its own charter, and also provided that cities having 100,000 population might frame and adopt their own charters. These provisions were held in the *Murnane* case to be constitutional and valid.⁴ Acts relating to St. Louis have since been held valid.⁵

³ Art. 9, sec. 7.

⁴ *Murnane v. St. Louis*, 123 Mo. 479, 27 S. W. 711.

⁵ *Kansas City v. Stegmiller*, 151 Mo. 189, 52 S. W. 723. The court says: "Again, we think it is plain that the framers of the constitution *ex vi termini* excluded from its legislative classification the city of St. Louis, which it expressly authorized to adopt its own scheme and charter, and all such cities as it authorized by section 16, article IX, to frame and adopt their own charters. These cities constitute two constitutional classes distinct from those chartered and classified by the legislature."

"It follows that the legislature may legislate directly for these constitutional cities without infringing the constitution, and in legislating therefor it does not create a new class but simply provides for a class created by the constitution. Having expressly provided for

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So acts have been sustained which were limited in their operation to cities of 100,000 or 300,000 inhabitants, St. Louis being the only one; but others limited in like manner have been held invalid. As there would seem to be some conflict in these decisions, they are referred to more in detail. The following were held valid, either as general laws or as in compliance with a command of the constitution: An act to provide for official stenographers in criminal courts having jurisdiction of felony in cities of 100,000 inhabitants or more;⁷ an act fixing the number of directors in public school boards and providing for their election;⁸ an act to provide for a board of police commissioners and the appointment and government of a police force;⁹ an act to provide for the registration of voters;¹⁰ an act to provide for the election, jurisdiction and compensation of justices of the peace.¹¹ On the other hand the following were held to be local or special and void: An act in relation to notaries;¹² an act re-

Mo. 652, 31 S. W. 87. In the case first cited an act to divide St. Louis into districts and to provide for the election of justices of the peace therein was held valid, and the court says: "While the act in question, when viewed simply with reference to the territory in which it is to operate, may in strictness be classed as a local law, yet when it is considered that other provisions of the constitution have so separated the city of St. Louis from other territorial divisions of the state as to give it an organization different from that of any county or other city, thus necessitating legislation applicable to it alone and which cannot be made applicable by a general law, we are forced to the conclusion that the act of 1877, providing for the election of justices of the peace in said city, is not such a local law as

falls within the prohibitions of sections 53 and 54, *supra*." pp. 558, 559.

⁷ State v. Wofford, 121 Mo. 61, 25 S. W. 851. The ground is thus stated: "A statute applicable to all cities of a certain population is a general law when it prescribes a rule for future government in all such cities as may, in the course of time, reach the requisite population, and is not restricted by its provisions to a state of facts then existing, and not applicable to any other city which may in future attain that population." pp. 68, 69.

⁸ State v. Miller, 100 Mo. 489, 13 S. W. 677.

⁹ State v. Mason, 153 Mo. 23, 54 S. W. 524.

¹⁰ State v. Mason, 155 Mo. 486, 55 S. W. 636.

¹¹ State v. Higgins, 125 Mo. 364, 28 S. W. 633.

¹² State v. Herrman, 75 Mo. 340.

lating to local improvements;¹³ an act to provide for the establishment of boulevards and to regulate the traffic thereon;¹⁴ an act relating to the compensation of probate judges;¹⁵ an act relating to the punishment of election frauds.¹⁶ In *Henderson v. Koenig* there is a review of the cases and an attempt to explain them.¹⁷ And in the last two cases referred to, which are very recent, it is held that no legislation for St. Louis as a class is valid, if on a subject where a general law exists or can be made applicable.

Acts applying to one of the legislative classes are held valid,¹⁸ but a particular act applicable to cities of a specified population, which does not correspond with either of the

¹³ *Murnane v. St. Louis*, 128 Mo. 479, 27 S. W. 711.

¹⁴ *St. Louis v. Dorr*, 145 Mo. 466, 41 S. W. 1094, 46 S. W. 976, 68 Am. St. Rep. 575, 42 L. R. A. 686.

¹⁵ *Henderson v. Koenig*, 168 Mo. 356, 68 S. W. 72.

¹⁶ *State v. Anslinger*, 171 Mo. 600, 71 S. W. 1041.

¹⁷ The court says: "But the assertion is made that cases have been decided by this court when local or special legislation, that is to say, legislation applicable alone to the city of St. Louis, or alone to Kansas City, has been held valid. This is true, but in the decisions in none of these cases was there any expression or ruling which impinges in the slightest degree on the constitutional prohibition against a local or special law being enacted where a general law could have been made applicable; on the contrary, either distinct or else implied recognition is constantly given to the idea that, owing to the circumstances and exigencies of the particular case, a general law could not have been made applicable, or where it

could not have been made applicable by reason of the fact that the legislation questioned was the result of direct obedience to some specific command of the constitution. This statement will be found to embrace all the cases decided on this subject. In this case, however, there is no command of the constitution requiring the general assembly to regulate respecting the compensation to be awarded the judge of probate of the city of St. Louis. Nor is there any exigency requiring such legislation and confining its operation, as does this act in question, to the city of St. Louis alone. There are cases where this court has said an act would have been valid applied to St. Louis by name; but this court has never said this of an act where a general law could have been made applicable, but only in cases where it could not." *Henderson v. Koenig*, 168 Mo. 356, 376, 377, 68 S. W. 72.

¹⁸ *Copeland v. St. Joseph*, 126 Mo. 417, 29 S. W. 281; *State v. Fleming*, 147 Mo. 1, 44 S. W. 758.

four classes, creates a fifth class in violation of the constitution and is void.¹⁹ It is also held that laws applicable to a class of cities must actually operate in each city of the class and cannot be left to operate in such cities only as may adopt the act by popular vote.²⁰

Cities under special charters are held to constitute a separate and distinct class,²¹ and an act authorizing cities under special charters, and containing more than 30,000 and less than 50,000 inhabitants, to construct a system of sewers, was held to be a general law and valid.²²

§ 207. Same—New Jersey.—The constitution forbids local or special legislation regulating the internal affairs of municipalities, and such legislation must be general and applicable to all alike, except where, by reason of the existence of a substantial difference between municipalities, a general law would be inappropriate to some while it would be appropriate to others. In such case the municipalities in which the peculiarity exists would constitute a class, and

¹⁹ *State v. Borden*, 164 Mo. 221, 64 S. W. 272.

²⁰ *Owen v. Baer*, 154 Mo. 484, 55 S. W. 644. The court says: "That the result of all legislation for the several classes of cities was the object which the convention had in view is obvious. It says 'the power of each class shall be defined by general laws,' so that 'all municipal corporations of the same class shall have the same powers.' In a word, pass general laws for the government of each class, but see to it that when your laws go into effect, the consequences shall be that each class shall at all times have the same powers and be subject to the same provisions; that is to say, you shall not go through the form of passing general laws which nominally confer the same powers upon a given class, but which inevitably

produce diverse powers the moment such laws are put into practical operation. How can it be said that when this act went into effect in Westport, and did not go into operation in all those cities of the fourth class which declined to avail themselves of it, that it was uniform in all cities of the fourth class? It certainly cannot be said by the suggestion that it was possible for all cities of that class to adopt it and thereby again bring about the uniformity which the adoption by some and neglect to adopt by others had destroyed." p. 442.

²¹ *Murnane v. St. Louis*, 123 Mo. 479, 27 S. W. 711.

²² *Rutherford v. Heddens*, 83 Mo. 388; *Rutherford v. Hamilton*, 97 Mo. 543, 11 S. W. 249.

the legislation would in fact be general because it would apply to all to which it would be appropriate.²³ An act concerning inns and taverns gave the court of common pleas the power to grant such license, but the act was restricted to cities, towns and counties by population so as to indicate an intention that it should operate in but three small towns in one county. It was objected that it was local and special, as there was no distinction of those towns from other municipalities which would in any reasonable degree account for such restriction. The court held the act unconstitutional.²⁴ The court said the constitutional provisions against special or local laws regulating the internal affairs of municipal corporations and political divisions of the state was to secure uniformity. "The uniformity that is thus sought can only be broken by classifications of those bodies that are founded on substantial differences, such as are not illusory or fraudulent in their character."²⁵

An act purporting to confer on cities having a population of twenty-five thousand a power of issuing bonds to fund their floating debt was held special, and unconstitutional on account of its operation being restricted to cities of that magnitude. There was deemed to be no connection between the number of people in a city and the right to fund its floating debt.²⁶ Where an act provided for a change in the management of the internal affairs of towns and boroughs which were divided into wards and then governed by

legislation which classifies municipal structure, machinery and powers on the basis of where population has reasonable relation to the subject-matter of the municipalities so classified, from others not so circumstanced, is valid. It appears that such is the actual effect of a general law, and, classification by legislative judgment, a legislative classification will prevail when it appears to be within the power stated and there is no apparent arbitrariness. sively.”²⁹ Many recent cases are on this point.

In 1882 the legislature passed an act classifying cities, as follows: First class, those with more than 12,000 population; second class, those containing between 12,000 and 15,000; third class, those with less than 12,000. and villages were divided into three classes: first, those with more than 3,000 population; second, those between 3,000 and 1,500; third, those with less than 1,500. This matter of legislation bears a proper relation to the subject-matter.

²⁹ *Hudson County v. Clarke*, 65 N. J. L. 277, 279, 47 Atl. 478. In another case the same court says: “That our cities may be classified on the basis of population, under statutes relating to municipal affairs, when population bears a reasonable relation to the subject-matter of the legislation, has frequently been decided, but such relationship exists only when such legislation deals with the structure or machinery of municipal government. Classification on the basis of population, for any other purpose than those mentioned, is illusory and unsubstantial, and consequently is within the constitutional prohibition.” *State v. Trenton*, 63 N. J. L. 795, 797, 44 Atl. 755.

³⁰ *State v. Clayton*, 53 N. J. L.



acts confined in their operation to one or more of these classes will be valid.²² But it is held that the legislature is not confined to the classes so established, but that it may in each act establish a new and different class, appropriate to the particular act. Thus an act to provide for the construction of water-works in municipalities of not more than 15,000 inhabitants, nor less than 500, was held valid.²³ So of acts relating to cities of the second class having 50,000 inhabitants or more,²⁴ or to all cities having a population of 55,000 to 100,000.²⁵ This would seem to open the door to any number of overlapping or interlacing classes, and to an infinite diversity of organization and powers.

It also appears that there have long existed in this state municipalities under the names, respectively, of cities, boroughs, towns, townships and villages, and that the existence of municipalities under these different names is recognized in the constitution. In the later cases, soon to be cited, they are referred to as common-law classes of municipalities. There is no uniformity as to the structure and powers of those under one name, but towns with substantially the same charters are sometimes called cities and sometimes boroughs, towns or villages. The latter are generally smaller and have a less complicated government, but not always. It is held by the highest court "that, as incorporated cities, boroughs, towns and villages, as well as townships, are recognized by the constitution as classes for legislation, laws limited to either of such classes will not violate

²² *In re Haynes*, 54 N. J. L. 6, 22 Atl. 923; *In re Sewer Assessment for Passaic*, 54 N. J. L. 156, 23 Atl. 517; *State v. Newark*, 57 N. J. L. 298, 30 Atl. 548; *McArdle v. Jersey City*, 66 N. J. L. 590, 49 Atl. 1013, 88 Am. St. Rep. 496.

²³ *State v. Moore*, 54 N. J. L. 121, 22 Atl. 993.

²⁴ *State v. Caminada*, 55 N. J. L.

4, 23 Atl. 933; *State v. Gibson*, 55 N. J. L. 11, 25 Atl. 985; *State v. Delaney*, 55 N. J. L. 9, 23 Atl. 936; *State v. Ridgeway*, 55 N. J. L. 10, 25 Atl. 936; *State v. Wescott*, 53 N. J. L. 78, 25 Atl. 269; *State v. Fury*, 55 N. J. L. 1, 25 Atl. 934.

²⁵ *State v. Kremer*, 63 N. J. L. 433, 41 Atl. 711.

the prohibition of private, local or special laws regulating the internal affairs of towns and counties."²⁷

§ 208. Same—Ohio.—Classification based upon substantial differences in population, and so defined as to include cities which afterwards attain the requisite population, are valid.²⁸ Originally municipalities were divided into five classes, three of cities and two of villages. But as time went on the classes were increased until they became very numerous, and the eleven largest cities were provided for in as many different classes. At last this classification was cut up by the roots by the supreme court, which held that it was not based upon differences of population or upon any other real or supposed differences in local requirements. "Its real basis," says the court, "is found in the differing views or interests of those who promote legislation for the different municipalities of the state."²⁹ The court further says in the case referred to: "The body of legislation relating to this subject shows the legislative intent to substitute isolation for classification, so that all the municipalities of the state which are large enough to attract attention shall be denied the protection intended to be afforded by this section of the constitution. The provisions of the section could not be more clear or imperative, and relief from the present confusion of municipal acts and the burdens which they impose would not be afforded by its amendment. Since we cannot hold that legislative power is in its nature illimitable, we must conclude that this provision of the paramount law annuls the

²⁷ *Hermann v. Guttenberg*, 68 N. J. L. 616, 623, 44 Atl. 758, affirming 52 Atl. 362.

S. C., 62 N. J. L. 605, 43 Atl. 703.

To same effect, *State v. Wright*, 54

N. J. L. 180, 28 Atl. 116; *State v.*

Asbury Park, 58 N. J. L. 604, 38

Atl. 850; *Drew v. West Orange*, 64

N. J. L. 481, 45 Atl. 787; *Flock v.*

Smith, 65 N. J. L. 224, 47 Atl. 443;

Allison v. Crocker, 67 N. J. L. 596,

52 Atl. 362.

²⁸ *State v. Baker*, 55 Ohio St. 1,

44 N. E. 516; *State v. Jones*, 66 Ohio

St. 453, 64 N. E. 424, 90 Am. St. Rep.

592.

²⁹ *State v. Jones*, 66 Ohio St. 453,

64 N. E. 424, 90 Am. St. Rep. 592;

State v. Beacon, 66 Ohio St. 491, 64

N. E. 427, 90 Am. St. Rep. 592.

acts relating to Cleveland and Toledo, if they confer corporate power." The acts in question were conceded to confer corporate power, and were held void.

Laws making a class of all cities between certain narrow limits of population, such as all cities of the fourth grade, second class, having not less than 5,550 and not more than 5,560 inhabitants, are evasive and void.⁴⁰ An act relating to elections, which applied to cities of certain classes but excepted Mansfield and cities of the fourth grade in the first class, was held to be local and special by reason of the exception.⁴¹ An act authorized any city of the third grade of the first class to construct and repair bridges over any navigable river in the city. Toledo was the only one of the class which had such a river and the only city to which it could apply. It was held special and void.⁴²

§ 209. Same — Pennsylvania.—The constitution of 1873 forbade the passage of local or special laws "regulating the affairs of counties, cities, townships, wards, boroughs, or school districts," or "incorporating cities, towns or villages, or changing their charters."⁴³ In 1874 the legislature passed a classification act, declaring that "for the exercise of certain corporate powers, and having respect to the number, character, powers and duties of certain officers thereof, the cities now in existence or hereafter to be created in this commonwealth are divided into three classes." The first embraced all having 300,000 population or more, the second, all having 100,000 and less than 300,000, and the third, all under 100,000. A scheme of government was provided for each class but the act did not operate upon existing cities until adopted by them. At the time the act was passed Philadelphia constituted the first class and Pittsburgh the second. This act and its classification have been

⁴⁰ *Kenton v. State*, 52 Ohio St. 59, 38 N. E. 885; *Pittsburgh, Ft. W. & C. Ry. Co. v. Martin*, 53 Ohio St. 386, 41 N. E. 690; *Carr v. Carrollton*, 8 Ohio C. C. 1.

⁴¹ *State v. Buckley*, 60 Ohio St. 273, 54 N. E. 272.

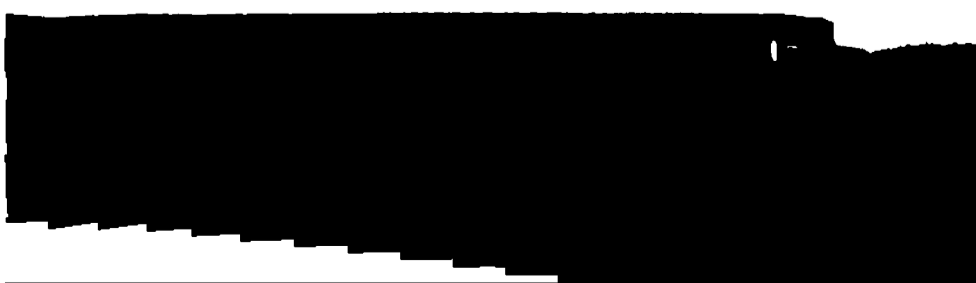
⁴² *Platt v. Craig*, 66 Ohio St. 75, 63 N. E. 594.

⁴³ Art. 3, sec. 7.

sustained in numerous cases.⁴⁴ Increased to five, and in 1887 to seven these acts were held to be an end and void. After reviewing cases the cases above cited have been length for the purpose of showing tended to sanction classification special legislation. On the principle of all the cases is that class legislating for either class separate constitutional unless a necessity the springing from manifest peculiar those of one class from each of the relatively demanding legislation for would be useless and detrimental acted in pursuance of such classification poses, are, properly speaking, . . . They are general laws, because they are similarly situated as to their legislation is necessarily based on objects, and when such classification acted in conformity thereto can be organized as either local or special.” In 1874 the court further says: “As created, that act appears to have of classification. It provided for conceivable prospective necessity suggest any legislation that has or is necessary for any member of either detriment to other members of applicable to all of them. If where the act of 1874 left it, it

⁴⁴ *Wheeler v. Philadelphia*, 77 Pa. Ha St. 838; *Kilgore v. Magee*, 85 Pa. 927 St. 401. Pa

⁴⁵ 122 Pa. St. 266, 16 Atl. 866, 2 L. v. R. A. 577. Also *Lackawana Tp. v.*



it did not. Without the slightest foundation in necessity the number of classes was soon increased to five, and afterwards to seven; and, if the vicious principle on which this was done be recognized by the courts, the number may at any time be further increased until it equals the number of cities in the commonwealth. The only possible purpose of such classification is evasion of the constitutional limitation; and, as such, it ought to be unhesitatingly condemned." The necessity for classification and the extent thereof, and whether a law is local or special, are held to be judicial questions.

Acts not relating to municipal purposes are invalid if limited in their operation to a class of cities.⁴⁶ An act relating to the collection of taxes of all kinds, municipal and otherwise, and limited in its operation to cities of the third class, was held local and special.⁴⁷ The court says: "Classification has been upheld for municipal purposes only. Legislation for a class of cities is only general and valid under our constitution when it relates to some municipal purpose. If it does not affect the exercise of some municipal power, or the number, character, powers and duties of municipal officers, or the regulation of some subject within the appropriate range of municipal control, the legislation is local and unconstitutional."

So long as the classes are not made so numerous as to be evasive of the constitution, it is for the legislature to say where the lines shall be drawn and what differences shall exist between the schemes of government for the several classes.⁴⁸

The act of 1874, heretofore referred to, provided that

⁴⁶ Ruan St. Opening, 182 Pa. St. Philadelphia v. Pepper, 18 Phila. 257, 19 Atl. 219, 7 L. R. A. 193; 419.

Wyoming St., 187 Pa. St. 494, 21 Atl. 74; Pittsburgh's Petition, 188 Pa. St. 401, 21 Atl. 761; Safe Deposit & Trust Co. v. Fricke, 152 Pa. St. 231, 25 Atl. 530; McKay v. Trainor, 152 Pa. St. 242, 25 Atl. 534; ⁴⁷ Van Loon v. Engle, 171 Pa. St. 157, 33 Atl. 77. To same effect, Scranton v. Whyte, 148 Pa. St. 419, 23 Atl. 1043.

⁴⁸ Commonwealth v. Moir, 199 Pa. St. 534, 49 Atl. 351, 85 Am. St.

when a city attained to the population of the class above it, it should, upon the filing of a certain certificate of the fact by the governor, pass at once into the new class, and that its corporate powers and the number, character, powers and duties of its officers should remain the same, except as otherwise provided in the general act. It is held that on the transition of a city to a new class all special laws pertaining to the city in conflict with the general law for such cities are left behind.⁴⁹

It is held that an act relating to a class of cities, which is to operate only in the cities which adopt it, tends to produce diversity and is void.⁵⁰

§ 210. *Same — Other states.*— The courts of the various states, as a general rule, sustain the right of the legislature to classify cities according to population, where the classification is based upon substantial differences in population and is so made as to include cities afterwards attaining the requisite population.⁵¹ “The classes cannot be made so numer-

Rep. 801. The court says: “Classification, therefore, is based on difference of municipal affairs, and so long as it relates to and deals with such affairs, the questions of where the lines shall be drawn and what differences of system shall be prescribed for differences of situation are wholly legislative. What is a distinction without a difference is largely matter of opinion. No argument, for example, could be more plausible than there is no real difference in municipal needs between a city of 99,000 and one of 100,000 population. It is a sufficient answer that the line must be drawn somewhere, and the legislature must determine where. So long as it is drawn with reference to municipal and not to irrelevant or wholly local matters,

the courts have no authority to interfere.” p. 545.

⁴⁹ *Commonwealth v. Macferron*, 152 Pa. St. 244, 25 Atl. 556.

⁵⁰ *Commonwealth v. Reynolds*, 137 Pa. St. 389, 20 Atl. 1011. See *ante*, § 201.

⁵¹ *Crovatt v. Mason*, 101 Ga. 246, 28 S. E. 891; *Owen v. Sioux City*, 91 Iowa, 190, 59 N. W. 8; *Tuttle v. Polk*, 92 Iowa, 433, 60 N. W. 783; *Cummings v. Chicago*, 144 Ill. 563, 33 N. E. 854; *Indianapolis v. Navin*, 151 Ind. 139, 47 N. E. 525, 41 L. R. A. 337; *Smith v. Indianapolis St. Ry. Co.*, 158 Ind. 425, 63 N. E. 849; *State v. Standley*, 76 Iowa, 215, 40 N. W. 815; *Topeka v. Gillett*, 83 Kan. 431, 4 Pac. 800; *Newman v. Emporia*, 41 Kan. 583, 21 Pac. 593; *Preston v. Louisville*, 84 Ky. 113; *Brown v. Holland*, 97 Ky. 249, 30

ous that it would require a separate statute for each separate corporation; nor could any supposed class be so specifically named or defined that only one particular corporation could come within such name or definition; for in either such case the statute itself would be special and not general."⁵²

The constitution of Kentucky of 1891 provides as follows: "The cities and towns of this commonwealth, for the purpose of their organization and government, shall be divided into six classes. The organization and powers of each class shall be defined and provided for by general laws, so that all municipal corporations of the same class shall possess the same power and be subject to the same restrictions."⁵³ The constitution designates the six classes by population, and provides that the general assembly shall assign the cities and towns of the state to the classes to which they respectively belong and shall change the assignments made as the population may increase or decrease. The legislature assigned Pineville to the fourth class, which embraced cities of from 3,000 to 8,000 inhabitants. The census of 1890 gave it but 1356. It was held that only the legislature could change the assignment, and that its right to an organization under the law for cities of the fourth class could not be tried in a *quo warranto* proceeding.⁵⁴ Where an act applies to all cities *having* a certain population, it is prospective and will embrace cities thereafter attaining that population.⁵⁵

As to the province and effect of classification acts the

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| <p>S. W. 629; Nichols v. Walter, 37 Minn. 264, 33 N. W. 800; Allen v. Pioneer Press, 40 Minn. 117, 41 N. W. 936; Cobb v. Bord, 40 Minn. 479, 42 N. W. 396; Rutherford v. Hamilton, 97 Mo. 543, 11 S. W. 249; State v. Stuht, 52 Neb. 209, 71 N. W. 941; People v. Squire, 14 Daly, 154; Reading v. Savage, 124 Pa. St. 323, 16 Atl. 788; Beaver Co. v. Indexes, 6 Pa. Co. Ct. 525; Cook v. State, 90 Tenn. 407, 16 S. W. 471, 13 L. R. A. 442; Johnson v. Martin, 75 Tex. 83,</p> | <p>12 S. W. 321; Boyd v. Milwaukee, 92 Wis. 456, 66 N. W. 603; Wait v. Santa Cruz, 75 Fed. 967; Wait v. Santa Cruz, 89 Fed. 612.
 ⁵² Topeka v. Gillett, 32 Kan. 431, 434, 4 Pac. 800.
 ⁵³ Const. 1891, sec. 156.
 ⁵⁴ Green v. Commonwealth, 95 Ky. 233, 24 S. W. 610.
 ⁵⁵ Kansas City v. Stegmiller, 151 Mo. 189, 52 S. W. 723; Boyd v. Milwaukee, 92 Wis. 456, 66 N. W. 603.</p> |
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supreme court of New Jersey, referring to the classification act of that state, says: "It is a mere formula, a convenient method by which to avoid the repetition of words and numerals when legislating for or interpreting enactments concerning municipalities. Beyond this it is incapable of exercising any controlling effect upon either the legislature or the courts. It does not extend the power of the one, nor limit that of the other; it may be ignored without impairing legislation, and its employment will not in the least degree tend to legitimize legislation otherwise vicious in a constitutional sense."⁴⁶

§ 211. For what purposes the classification of municipalities is permissible.—The question is thus answered by the supreme court of Pennsylvania: "This is, therefore, the test by which to determine the validity of a law relating to a given class of cities. If it relates to subjects of municipal concern only, it is constitutional, because operating upon all the members of the class it is a general law. If it relates to subjects of a general, as distinguished from a municipal, character, it is local, and therefore invalid, although it may embrace all the members of the class."⁴⁷ In New Jersey it is held to be the settled law of the state that "with regard to *structural forms of government and administration*, the municipalities of the state may be distributed, for legislative purposes, into classes constructed on the basis of population;" and that it is only when legislation "relates to something manifestly foreign to the distinctive grade of

⁴⁶ *State v. Wescott*, 55 N. J. L. 78, 80, 25 Atl. 269. To same effect, *State v. Connelly*, 66 N. J. L. 197, 48 Atl. 955, 88 Am. St. Rep. 469; *Hudson County Freeholders v. Clarke*, 65 N. J. L. 271, 47 Atl. 478. In the last case the court says: "If a classification would be illusory if it were based upon population definitely stated, it is equally illusory if based upon reference to the clas-

sification act of cities and counties. The classification act is simply a method of convenient reference to counties by population, by referring to such act instead of designating in the statute itself the population of the counties or municipalities to which it is to apply." p. 276.

⁴⁷ *Scranton v. Whyte*, 148 Pa. St. 419, 426, 23 Atl. 1043.

the cities to which it is applied," that it is special and void.⁵⁸ Many other cases to the same effect will be found referred to in the preceding sections.⁵⁹

The reason upon which classification is founded is that cities of widely different population have different needs and conditions which render necessary corresponding differences in their corporate powers and in the number, character, powers and duties of the officers by whom the municipal government is to be conducted and its necessities provided for.⁶⁰ Where the reason ceases to operate classification by population ceases to be valid.

Acts relating to primary and general elections and the registration of voters may be made applicable to one or more classes of cities.⁶¹ So of acts relating to the election or appointment of municipal officers or boards, or to their terms of office, powers, duties or compensation.⁶² But the decisions do not seem to be uniform even in the same state.

⁵⁸ *State v. Caminade*, 55 N. J. L. 4, 25 Atl. 933. Continuing the court says: "This principle leaves it to the legislature to create or to modify, in general, the institutions in each class of our cities as it may deem expedient, and such institutions may differ in all respects, or in some respects, from those existing in cities of other grades, provided the differentiation thus introduced is not demonstrably evasive of the constitutional provision under discussion." p. 6.

⁵⁹ See also *State v. Newark*, 57 N. J. L. 298, 80 Atl. 548; *Foley v. Hoboken*, 61 N. J. L. 478, 38 Atl. 883; *Ruan Street Opening*, 132 Pa. St. 257, 19 Atl. 219, 7 L. R. A. 193; *Wyoming Street*, 137 Pa. St. 494, 21 Atl. 74; *Commonwealth v. Moir*, 109 Pa. St. 534, 49 Atl. 851, 85 Am. St. Rep. 801.

⁶⁰ *Ruan Street Opening*, 132 Pa.

St. 257, 19 Atl. 219, 7 L. R. A. 193; *State v. Caminade*, 55 N. J. L. 4, 25 Atl. 933.

⁶¹ *State v. Fleming*, 147 Mo. 1, 44 S. W. 758; *State v. Mason*, 155 Mo. 486, 55 S. W. 636; *Ladd v. Holmes*, 40 Ore. 167, 66 Pac. 714; *Cook v. State*, 90 Tenn. 407, 16 S. W. 471, 13 L. R. A. 442.

⁶² *Crovatt v. Mason*, 101 Ga. 246, 28 S. E. 891; *State v. Mason*, 153 Mo. 23, 54 S. W. 524; *In re Haynes*, 54 N. J. L. 6, 22 Atl. 928; *State v. Fury*, 55 N. J. L. 1, 25 Atl. 934; *State v. Caminade*, 55 N. J. L. 4, 25 Atl. 933; *State v. Gibson*, 55 N. J. L. 11, 25 Atl. 935; *State v. Delaney*, 55 N. J. L. 9, 25 Atl. 936; *State v. Ridgeway*, 55 N. J. L. 10, 25 Atl. 936; *State v. Kremer*, 62 N. J. L. 488, 41 Atl. 711; *State v. Conelly*, 66 N. J. L. 197, 48 Atl. 955, 88 Am. St. Rep. 469.

An act relating to the consolidation of offices and to the terms, duties and compensation of officers, and limited to cities of the second class having less than 35,000 population, was held special and void because there was no reason why it should not apply to cities of more or less population.⁶³ The same ruling was made upon an act providing that in cities of the first class municipal officers should be elected on the same day and voted for on the same ballot as state and county officers. It was said that if an evil existed in the old system it existed in all municipalities, and that the remedy should extend to all.⁶⁴ An act changing the method of appointing the city physician in cities of the second class was held void because there was no reason why it should not apply to all classes.⁶⁵

Acts relating to gas and water supply and similar public services may be limited to a class.⁶⁶ And so of acts relating to local improvements.⁶⁷ But acts or provisions as to procedure in condemnation cases, or in the assessment of damages and benefits, or as to the lien of assessments, are held to relate to subjects of a general nature, and such legisla-

⁶³ *State v. Orange*, 60 N. J. L. 111, 36 Atl. 708.

⁶⁴ *State v. O'Donnell*, 60 N. J. L. 85, 37 Atl. 72.

⁶⁵ *State v. Simon*, 58 N. J. L. 550, 23 Atl. 120. The court says: "In this case there has been no reason assigned, nor is it apparent, why an officer known as city physician, in a city of the second class, should have a different appointment, with a term fixed by the mayor and with an annual salary to be allowed by the legislative body confirming the appointment, from a physician to be appointed and compensated in a city of the first class, or of the third class. Population cannot have any just reference to this distinction between these classes by

which the middle class is separated from the others." p. 552.

⁶⁶ *In re Haynes*, 54 N. J. L. 6, 23 Atl. 928; *State v. Moore*, 54 N. J. L. 121, 23 Atl. 993; *Flynn v. Little Falls Elec. & Water Co.*, 74 Minn. 180, 77 N. W. 180. *Contra*, *Van Fleet v. C.*, in *Atlantic Water Works Co. v. Consumers' Water Co.*, 44 N. J. Eq. 427, 15 Atl. 581.

⁶⁷ *Cummings v. Chicago*, 144 Ill. 568, 88 N. E. 854; *Tuttle v. Polk*, 92 Iowa, 433, 60 N. W. 738; *State v. District Court*, 61 Minn. 542, 64 N. W. 190; *Rutherford v. Heddens*, 82 Mo. 388; *Rutherford v. Hamilton*, 97 Mo. 548, 11 S. W. 249; *Scranton v. Whyte*, 148 Pa. St. 419, 23 Atl. 1043.

tion, limited to a class of municipalities, is held to be special and void.⁶⁸ An act which permitted the formation of companies to construct and maintain sewerage systems, on consent of one-half the owners of real estate in the municipality and the consent of the municipality, was amended so as to permit such companies to operate in cities of the third class on consent of the municipality alone. The amendment was held special and void.⁶⁹ The same ruling was made upon an act which permitted cities of the second class to defray the cost of repaving streets by an issue of bonds to be paid by a general tax.⁷⁰

The following acts, limited in operation to a class of cities, were held valid: For the regulation of undertakers;⁷¹ for the regulation of junk and second-hand dealers;⁷² respecting licenses;⁷³ fixing the number of school directors and providing for their election;⁷⁴ for dividing cities into wards and election districts;⁷⁵ establishing a police court;⁷⁶ authorizing an extension of boundaries;⁷⁷ authorizing the issue of bonds to refund indebtedness;⁷⁸ to establish an excise department;⁷⁹ regulating the liquor traffic;⁸⁰ relating

⁶⁸ *Pasadena v. Stimson*, 91 Cal. 238, 27 Pac. 604; *Waln v. Beverley*, 55 N. J. L. 544, 26 Atl. 709; *Wyoming Street*, 137 Pa. St. 494, 21 Atl. 74; *Pittsburgh's Petition*, 138 Pa. St. 401, 21 Atl. 761.

⁶⁹ *State v. Plainfield*, 54 N. J. L. 529, 24 Atl. 494.

⁷⁰ *Foley v. Hoboken*, 61 N. J. L. 478, 38 Atl. 833.

⁷¹ *Commonwealth v. Hanley*, 15 Pa. Supr. Ct. 271.

⁷² *Commonwealth v. Mintz*, 19 Pa. Supr. Ct. 283.

⁷³ *Johnson v. Asbury Park*, 58 N. J. L. 604, 33 Atl. 850; S. C., affirmed, 60 N. J. L. 427, 39 Atl. 693.

⁷⁴ *State v. Miller*, 100 Mo. 439, 18 S. W. 677.

⁷⁵ *State v. Newark*, 57 N. J. L. 298, 30 Atl. 543; *State v. Atlantic City*, 56 N. J. L. 232, 28 Atl. 427.

⁷⁶ *State v. Caminade*, 55 N. J. L. 4, 25 Atl. 933; *State v. Wescott*, 55 N. J. L. 78, 25 Atl. 269.

⁷⁷ *Copeland v. St. Joseph*, 126 Mo. 417, 29 S. W. 281.

⁷⁸ *Waite v. Santa Cruz*, 75 Fed. 967; *Waite v. Santa Cruz*, 89 Fed. 619.

⁷⁹ *McArdle v. Jersey City*, 66 N. J. L. 590, 49 Atl. 1013, 88 Am. St. Rep. 496; *State v. Guttenberg*, 62 N. J. L. 605, 48 Atl. 703; S. C., affirmed, 63 N. J. L. 616, 44 Atl. 758.

⁸⁰ *State v. Glenn*, 47 N. J. L. 105; *State v. Staats*, 54 N. J. L. 286, 23 Atl. 667.

to the use of streets by railroad companies;⁸¹ exempting cities of the first class from giving bond in case of appeal;⁸² providing for disincorporation.⁸³

On the other hand the following acts, limited in like manner, were held local, or special and void, because of the limitation: Relating to the collection of debts and enforcing of judgments;⁸⁴ limiting the time for commencing suit in certain cases;⁸⁵ requiring fire-escapes on certain classes of buildings;⁸⁶ relating to liens and the collection of debts;⁸⁷ providing a special mode for the construction and repair of high school buildings;⁸⁸ providing for the collection of taxes of all kinds;⁸⁹ providing for a board of equalization and assessment for purposes of taxation;⁹⁰ regulating the manner of receiving and paying fees for official services and designed to protect the municipality from loss;⁹¹ relating to notaries;⁹² fixing the term of office of clerk and collector of taxes;⁹³ fixing the punishment for election frauds;⁹⁴ forbidding the establishment of a cemetery within one mile of the city limits, the drainage of which is into a stream from

⁸¹ *Burlington v. Penn. R. R. Co.*, 56 N. J. Eq. 259, 88 Atl. 849; S. C., affirmed, *Pennsylvania R. R. Co. v. Burlington*, 58 N. J. Eq. 547, 48 Atl. 700.

⁸² *McClay v. Lincoln*, 83 Neb. 412, 49 N. W. 282.

⁸³ *Mintzer v. Schilling*, 117 Cal. 861, 49 Pac. 209.

⁸⁴ *Betz v. Philadelphia*, 19 Phila. 452.

⁸⁵ *Gorley v. Louisville*, 104 Ky. 872, 47 S. W. 268; *Louisville v. Kuntz*, 104 Ky. 584, 47 S. W. 592; *Louisville v. Hegan*, 20 Ky. L. R. 1582, 49 S. W. 532.

⁸⁶ *Cincinnati v. Steinkamp*, 54 Ohio St. 284, 43 N. E. 490. *Contra*, *Cincinnati v. Steinkamp*, 9 Ohio C. C. 178.

⁸⁷ *Philadelphia v. Haddington*, 115 Pa. St. 291, 8 Atl. 241; *Philadelphia v. Pepper*, 18 Phila. 419.

⁸⁸ *State v. Trenton*, 61 N. J. L. 484, 40 Atl. 442; S. C., affirmed, 63 N. J. L. 795, 44 Atl. 755.

⁸⁹ *Van Loon v. Engle*, 171 Pa. St. 157, 33 Atl. 77.

⁹⁰ *Gaylor v. Hubbard*, 56 Ohio St. 25, 46 N. E. 66. But see *In re Sewer Assessment for Passaic*, 54 N. J. L. 156, 23 Atl. 517.

⁹¹ *Rauer v. Williams*, 118 Cal. 401, 50 Pac. 691.

⁹² *State v. Hermann*, 75 Mo. 340.

⁹³ *Canfield v. Davies*, 61 N. J. L. 26, 39 Atl. 357.

⁹⁴ *State v. Anslinger*, 171 Mo. 600, 71 S. W. 1041.

which a water supply is obtained;* providing for the protection of life and property.**

§ 212. **Municipalities under special charters.**—An act providing in substance that all cities and towns theretofore incorporated under special acts and charters, and which did not then possess the power to sell personal and real property for taxes, should thereafter have and possess such power, was held general and constitutional. Though it did not apply to all cities and towns in the state, it was not therefore unconstitutional; other cities and towns possessed that power, and the act in question brought the class to which it applied into harmony with them. As the act applied to all cities and towns in the state falling within the class specified, not to make an exceptional rule, but to remove an exception, it was not local or special, but of uniform operation.⁹⁷ Whether municipalities under special charters may constitute a class for legislative purposes is a question upon which there seems to be a difference of opinion. In New Jersey it is held that a classification of cities based upon previous local legislation is vicious.⁹⁸ The court says: "The recognition of such local legislation by relying upon it as a foundation for new legislation which only changes, perpetuates or perhaps increases the previous local or special features created by special charters, is as inimical to the constitutional provision as if the last legislation created the diversity which it perpetuates."⁹⁹ The contrary has been held in Wisconsin.¹ A statute permitting any city or

⁹⁶ *Philadelphia v. Westminster* land, 56 N. J. L. 364, 28 Atl. 599; *Cem. Co.*, 163 Pa. St. 105, 29 Atl. 349. *State v. Newark*, 57 N. J. L. 83, 30

⁹⁸ *State v. Ketter*, 65 Ohio St. 538, Atl. 186; *Grey v. Union*, 67 N. J. L. 368, 51 Atl. 482.

⁹⁷ *Haskel v. Burlington*, 80 Iowa, 232; *Iowa Land Co. v. Soper*, 39 id. 112; *Bumsted v. Govern*, 47 N. J. L. 368, 1 Atl. 835; affirmed, 48 id. 612, 9 Atl. 577. See also *State v. Sullivan*, 62 Minn. 288, 64 N. W. 813.

⁹⁹ *State v. New Brunswick*, 47 N. J. L. 479, 484, 485, 1 Atl. 496.

¹ *Johnson v. Milwaukee*, 88 Wis. 383, 60 N. W. 270; *Appleton W. W. Co. v. Appleton*, 116 Wis. 363, 93 N. W. 262; *Schintgen v. La Crosse*, 117 Wis. 158.

² *State v. New Brunswick*, 47 N. J. L. 479, 1 Atl. 496; *State v. Dor-*

ganized under a special charter to adopt and be governed by any section or part of the general law was held valid.² An act which in effect adopts and perpetuates the provision of special charters, and which is dependent upon them for its meaning and effect, is special and void.³ In one of the cases cited an act, applicable to cities of over 100,000 and not exceeding 165,000 population, authorized the common council to fix the salaries of all city officers and employees, but provided that it should not fix a greater sum than was then paid for such purposes. The only city embraced by the act was under a special charter and the cities that might come into the class were also under special charters. The act was held special because the maximum could only be ascertained by reference to the charter, and, if other cities came into the class, each might have a different maximum.⁴ An act which permitted municipalities organized under special charters to adopt the general law and retain certain provisions of their charters relating to liquor licenses was held void as an attempt to create a class of municipalities not founded on any valid distinctions.⁵

§ 213. Other classification of municipalities or for municipal purposes.—Cities abutting on the ocean may constitute a class for certain purposes.⁶ An act legalizing the

² *Adams v. Beloit*, 105 Wis. 868, 81 N. W. 862, 47 L. R. A. 441.

³ *Alexander v. Duluth*, 57 Minn. 47, 58 N. W. 806; *Bowe v. St. Paul*, 70 Minn. 841, 78 N. W. 184; *State v. Johnson*, 77 Minn. 453, 80 N. W. 420. Compare *State v. Minor*, 79 Minn. 201, 81 N. W. 912.

⁴ *Bowe v. St. Paul*, 70 Minn. 841, 78 N. W. 184. The court says: "It must appear that the act will always, by the force of its own terms, continue to be a general law. Again, this act might become special in its operation and effect by the future repeal of some of these

special laws. A general law cannot be based on special laws, even though its operation is general when passed, if the legislature by the future repeal of any or all of the special laws may render the so-called general law special in its operation and effect. The act cannot be constitutional to-day and unconstitutional to-morrow. If it may in the future become unconstitutional it is so when passed."

⁵ *People v. Normal*, 170 Ill. 468, 48 N. E. 901.

⁶ *State v. Wright*, 54 N. J. L. 130, 28 Atl. 116.

incorporation of towns or cities which have attempted to organize under an invalid law is valid. Such communities constitute a class for such purposes.⁷ An act dividing townships into two classes according to density of population, those having three hundred or more to the square mile forming one class and all others a second class, was held valid.⁸ Townships containing unincorporated villages of a certain population were held to constitute a distinct class for receiving additional powers.⁹ An act provided that, in townships which contained a city of eight hundred or more population, the part outside the city might organize as a school district. The act was held special because it excluded townships containing an incorporated town or village having the same population.¹⁰ An act that in cities where the office of treasurer was for an indefinite term the council should have power to fix a definite term, not exceeding five years, was held special and void.¹¹ An act in regard to local improvements was held special and void because it applied only to municipalities governed by commissioners.¹² Boroughs may not be classified according to the manner in which licenses are granted therein.¹³ An act fixing the term of office of city physician at three years in all cities

⁷ *State v. Thief River Falls*, 76 Minn. 15, 78 N. W. 867; *Winneconne v. Winneconne*, 111 Wis. 18, 86 N. W. 590; *Pullman v. Hungate*, 8 Wash. 519, 36 Pac. 488. In the latter case the court says: "The fact that the inhabitants of a certain locality, by their own action, have assumed to act in a particular capacity distinguished from that of the people at large, so separates them as a class from the rest of the people of the state that the legislature may properly deal therewith in a different manner than with the rest of the people without its action being special legislation."

See *Denver v. Spokane Falls*, 7 Wash. 226, 34 Pac. 926.

⁸ *Commonwealth v. Blackley*, 198 Pa. St. 372, 47 Atl. 1104; *Philadelphia & R. Coal & L. Co.'s Petition*, 200 Pa. St. 352, 49 Atl. 797.

⁹ *Land, Log & Lumber Co. v. Brown*, 73 Wis. 291, 40 N. W. 482.

¹⁰ *Plummer v. Borsheim*, 8 N. D. 565, 80 N. W. 690.

¹¹ *Uffert v. Vogt*, 65 N. J. L. 377, 47 Atl. 225; S. C. affirmed, 65 N. J. L. 621, 48 Atl. 574.

¹² *State v. Long Branch Com'rs*, 59 N. J. L. 146, 36 Atl. 482.

¹³ *State v. Hoover*, 58 N. J. L. 884, 33 Atl. 217.

in which it was not previously fixed by law, and which thus excluded five cities from its operation, was held special and void.¹⁴ An act approved and in effect April 13, 1889, provided that any city which contained more than two assembly districts wholly within the city should be re-divided into wards to correspond with the assembly districts. An act approved March 27 and in effect July 4 of the same year so arranged the assembly districts that this condition would exist only in Newark. It was held that the effect of the two was to make the former act special and void.¹⁵

Townships situated in counties of the first class do not constitute a class for legislation.¹⁶ So of cities situated in counties of 60,000 population or more.¹⁷ An Illinois revenue act provided that in counties having a population in excess of 125,000, of which there was only one, the aggregate rate of taxation should not exceed five per cent., and that the county, school and municipal tax rates should be scaled *pro rata*, if necessary, to bring the aggregate within that limit. The provision was held void as special legislation, because it made a class of cities, towns and school districts situated in that county without any reasonable foundation therefor. "By this act," says the court, "restrictions are put upon cities, townships, school districts and other municipal corporations simply because they are within Cook county, which is the only county in the state with a population of more than 125,000. There can be no reason, in the nature of things, why a city, village or school district or other public corporation in that county should be deprived of powers that a similar corporation situated in some other county is permitted to exercise. It is an arbitrary and unnatural classification of municipalities not

¹⁴ *Tetrault v. Orange*, 55 N. J. L. 99, 25 Atl. 268.

¹⁵ *State v. Newark*, 53 N. J. L. 4, 20 Atl. 886, 10 L. R. A. 700.

¹⁶ *Crookall v. Matthews*, 61 N. J. L. 349, 39 Atl. 659.

¹⁷ *Scowden's Appeal*, 96 Pa. St. 422.

different in population, needs or requirements, and exercising the same general powers in other respects."¹⁸

An act permitted an area not exceeding two square miles and having taxable property of at least \$100,000 to become incorporated as a borough, provided that during any portion of the year a population of not less than 200 resided thereon. It was held special and void by reason of the condition in the proviso.¹⁹ An act which permitted the organization of a township from part of an incorporated town, while a similar area with the same population not so situated was not given the privilege, was held to be special legislation and void.²⁰ An act providing for the incorporation of any township, or part of a township, containing not more than four square miles and not more than 5,000 inhabitants, into a borough, was held to be a general law and valid. While such laws usually fix a minimum of population, it was held valid to fix a maximum.²¹ An act in regard to the construction of sidewalks applied to villages which had not constructed walks under a certain act. This was held an illusory classification.²² Municipalities organized under the general law may be legislated for as a class.²³

¹⁸ *People v. Knopf*, 183 Ill. 410, 56 N. E. 155.

¹⁹ *Attorney-General v. Anglesea*, 58 N. J. L. 372, 33 Atl. 971.

²⁰ *People v. Martin*, 178 Ill. 611, 53 N. E. 309.

²¹ *State v. Clayton*, 53 N. J. L. 277, 21 Atl. 1026. After referring to the principles of classification by population, the court says: "But the act has been made to operate upon a population within a fixed number. Hence a different question arises, but to be settled by an application of the same principle. The legislature, probably conceiving that the imposition of the burden of such a corporation on a too limited population without necessity was guarded against by

the provision submitting the proposed organization to a vote, have used population as fixing a limit beyond which municipal powers of the limited extent provided for in this act should not be acquired. This requires the inference that the legislature determined that such a borough organization, appropriate and sufficient for a population not exceeding five thousand, would not be appropriate or sufficient for a greater number. Can we pronounce this erroneous, or such classification illusive? I think not." p. 282.

²² *Costello v. Wyoming*, 49 Ohio St. 202, 30 N. E. 618.

²³ *Flynn v. Little Falls Elec. & Water Co.*, 74 Minn. 180, 77 N. W.

§ 214. Classification based on existing or past conditions only.—A classification based upon existing or past conditions or facts, and which would exclude the persons, places, things or objects thereafter coming into the same situation or condition, is special and void.²⁴ Thus a classification of cities or counties based upon existing population or upon the population shown by specified census is of this character.²⁵ An act applicable to all counties having by the last census a population of 150,000 or upwards was held not to fix the last census before the passage of the act as the criterion for all time, but to mean the last census from time to time.²⁶ The following were held within the principle stated: An act providing for the changing of county seats, with a proviso that it should not apply to any county “wherein the court-house and jail *now* erected exceed in value the sum of \$35,000;”²⁷ an act granting certain privileges for the planting and raising of oysters in lands under tidewaters to those who *now* use and *have used* such lands since January 1, 1880;²⁸ an act providing for licensing race tracks, but providing that no license should be granted to any race course not in use prior to a given date, unless

180; *Butler v. Montclair*, 67 N. J. L. 426, 51 Atl. 494.

²⁴ *Thomas v. Austin*, 103 Ga. 701, 30 S. E. 627; *Murnane v. St. Louis*, 123 Mo. 479, 27 S. W. 711; *State v. O'Connor*, 54 N. J. L. 88, 22 Atl. 1091; *State v. Trenton*, 55 N. J. L. 72, 25 Atl. 118; *Burlington v. Pennsylvania R. R. Co.*, 56 N. J. Eq. 359, 38 Atl. 849; *Pennsylvania R. R. Co. v. Burlington*, 58 N. J. Eq. 547, 48 Atl. 700; *State v. Newark*, 57 N. J. L. 88, 30 Atl. 186; *Cincinnati v. Roche Bros.*, 50 Ohio St. 103, 33 N. E. 408, 40 Am. St. Rep. 653; *Silberman v. Hay*, 59 Ohio St. 582, 53 N. E. 253; *Johnson v. Milwaukee*, 88 Wis. 383, 60 N. W. 270; *State v. Trenton*, 54 N. J. L. 444, 24 Atl. 478; *State v.*

Trenton, 56 N. J. L. 469, 29 Atl. 183; *Lougher v. Soto*, 129 Cal. 610, 69 Pac. 184; *Hetland v. County Commissioners*, 89 Minn. 492, 95 N. W. 805; *Commonwealth v. Patton*, 88 Pa. St. 238; *Scowden's Appeal*, 96 Pa. St. 422.

²⁵ *Campbell v. Indianapolis*, 155 Ind. 186, 57 N. E. 920; *State v. Des Moines*, 96 Iowa, 521, 65 N. W. 812; *General Trust Co. v. Citizens' St. Ry. Co.*, 80 Fed. 218.

²⁶ *Verges v. Milwaukee County*, 116 Wis. 191, 98 N. W. 44.

²⁷ *Edmonds v. Herbrandson*, 2 N. D. 270, 50 N. W. 970, 14 L. R. A. 725.

²⁸ *State v. Post*, 55 N. J. L. 264, 26 Atl. 683.

the board of chosen freeholders of the county should declare that it was a public necessity.²⁹ An act in regard to the removal of county seats required a three-fifths vote in favor of the proposition, but provided that where the county seat of any county had been relocated by a special act of the legislature since a given time, a majority vote should be sufficient. It was held to be a local and special law. The court said: "This is classification run mad."³⁰ An act applicable to all counties in which were cast at the general election of 1882 more than 1,150 votes was held to be special and void.³¹ But in another case an act which excepted from its operation counties in which the vote at the last election for president was less than 3,000 was held not to be local or special.³² A remedial act is held not to be local or special because applying only to present emergencies and not to like emergencies in the future.³³

§ 215. Validity of class not dependent upon number — Classes of one or a few.—The number of persons affected by a law does not control or determine the question of its validity; it is enough that the law relates to a subject of a general nature, and is general and uniform in its operation upon every person who is brought within the relation and circumstances provided for by it.³⁴ A class of cities or counties, based upon population, may be valid, though it embraces but one city or county, if others may come into the class on attaining the specified population.³⁵

²⁹ *State v. Elizabeth*, 56 N. J. L. 71, 18 Atl. 51.

³⁰ *Fitzgerald v. Phelps & B. Windmill Co.*, 42 W. Va. 570, 26 S. E. 315. See *Commonwealth v. Patton*, 88 Pa. St. 258, for the origin of this expression.

³¹ *State v. Boyd*, 19 Nev. 43, 5 Pac. 735.

³² *Clark v. Finley*, 98 Tex. 171, 54 S. W. 848.

³³ *State v. Guttenberg*, 63 N. J. L. 605, 43 Atl. 703; S. C. affirmed, *Her-*

mann v. Guttenberg, 63 N. J. L. 616, 44 Atl. 758; *Alexander v. Duluth*, 77 Minn. 445, 80 N. W. 623. See *ante*, § 201.

³⁴ *McAnnich v. Miss. & M. R. R. Co.*, 20 Iowa, 338; *Thomason v. Ashworth*, 73 Cal. 73, 14 Pac. 615.

³⁵ *Indianapolis v. Navin*, 151 Ind. 139, 47 N. E. 525, 41 L. R. A. 337; *Campbell v. Indianapolis*, 155 Ind. 186, 57 N. E. 920; *Smith v. Indianapolis St. Ry. Co.*, 158 Ind. 425, 63 N. E. 849; *People v. Onahan*, 170

An act which prohibited the deposit of material in the waters of New York harbor was held to be a general and not a local or special law.³⁶ In the case first cited the court says: "The fact that an act operates only upon a limited area or upon persons within a specified locality and not generally throughout the state is, in most cases, a reasonably accurate test by which to determine whether the act is general or local. But it is not decisive in all cases. The entire state may be interested in the enactment and execution of a law operating territorially upon a particular section of the state only." "The citizens of New York city may possibly have a greater stake in the matter than citizens in other localities, but the destruction or serious impairment of the harbor of New York would directly affect the prosperity of the state. It would impair its revenues, imperil its system of river, canal, and railroad transportation, and it is not too much to say that every industrial interest, agricultural or mechanical, would feel its blighting influence."

On the same reasoning an act providing for the sale and lease of school lands in a particular part of the state was held not to be a local law.³⁷ So of an act regulating the taking, planting and cultivating of oysters in particular tide waters but not in all.³⁸ A statute of New Jersey gave the

Ill. 449, 48 N. E. 1003; *Winston v. Stone*, 102 Ky. 423, 43 S. W. 397; *State v. Wilson*, 19 Ky. L. R. 126, 39 S. W. 49; *State v. Frank*, 60 Neb. 327, 83 N. W. 74; *People v. Squire*, 14 Daly, 154.

³⁶ *Ferguson v. Ross*, 126 N. Y. 459, 27 N. E. 954; *Ferguson v. Sandford*, 59 Hun, 207, 13 N. Y. S. 398. In the latter case the court says: "We think that, inasmuch as the act in question operates upon a subject in which the whole people are interested, and prescribes a rule of conduct for all persons and renders all

persons liable to its penalties wherever they reside, it is to be considered a general, as contradistinguished from a local, act." p. 209. So of an act relating to the port of New Orleans. *Duffy v. New Orleans*, 49 La. Ann. 114, 21 So. 179. Says the court: "The fertile valley is interested; the traffic and commerce on seas and oceans are concerned."

³⁷ *Reed v. Rogan*, 94 Tex. 177, 59 S. W. 255.

³⁸ *State v. Carson*, 67 N. J. L. 178, 50 Atl. 780. The court says of the

state commissioner of public roads a fixed salary instead of a *per diem*, and limited the expense connected with his office. It was held to be a general law because there was no other office with like characteristics and it formed a class by itself. "The case turns, therefore," says the court, "upon the classifiability, for the purposes of legislation, of the object of the present law. This is a question of fact. The law is entirely clear that if an object be susceptible of classification it cannot be legislated for separately. Correlatively, it is equally clear that an object that is not susceptible of classification is not, on that account, placed beyond the pale of legislative control."³⁹ An Illinois act authorized any board of park commissioners, upon certain conditions, to take control of any city street for the purpose of connecting any park under its control with any part of any city, town or village. There was but a single city having parks under the control of park commissioners, and consequently only one city where it could operate. It was held not local or special.⁴⁰ Additional cases of the same purport are referred to in the margin.⁴¹

An act which designates a particular city or county by name, or by a description so qualified that a particular city or county is plainly intended, and that no other can reasonably be expected to have the distinguishing characteristics, and whose operation is limited to such city or county, is held to be local or special.⁴²

act: "Although it deals with the lands of the state under tide water only in certain localities, the matters which it regulates are of general, not local, concern. The lands themselves belong to the people of the state, not to the citizens of the counties where they are located." p. 189.

³⁹ *Budd v. Hancock*, 66 N. J. L. 133, 48 Atl. 1023.

⁴⁰ *West Chicago Park Com'rs v. McMullen*, 134 Ill. 170, 23 N. E. 676, 10 L. R. A. 215. "If because only

a single city had such parks, an act general in its application to all cities would be local or special legislation, no valid act could be passed affecting such existing parks." p. 176.

⁴¹ *Trausch v. Cook County*, 147 Ill. 534, 35 N. E. 477; *State v. Stratton*, 136 Mo. 423, 38 S. W. 83; *Trenor v. Eichhorn*, 74 Hun, 58, 26 N. Y. S. 314; *Condon v. Maloney*, 108 Tenn. 82, 65 S. W. 871.

⁴² *People v. Common Council*, 85 Cal. 369, 24 Pac. 727; *Burnham v.*

A unique condition of things, existing in a single city and arising out of prior valid special laws, enacted when the constitution did not forbid such legislation, and which cannot arise again under existing constitutional provisions, may make a case constituting a class by itself and be dealt with by appropriate legislation applicable expressly to such condition.⁴³

§ 216 (120). **Evasive classification — Examples.**—In respect to the enumerated subjects as to which legislation is required to be general, and special acts prohibited, though such subjects may be divided into classes distinguished by substantial differences for the purpose of legislation appropriate to such conditions as spring from these differences, there must nevertheless be a limit to such division, even founded on substantial differences. Within certain limits subjects may be grouped on the basis of such differences for general legislation; beyond those limits such differences would not be the basis of classification, but the ground of segregation by which each individual would be distinguished for special enactments.⁴⁴ The prohibition is in the way of

Milwaukee, 98 Wis. 128, 73 N. W. 1018; *State v. Smith*, 48 Ohio St. 211, 31 N. E. 743; *Mott v. Hubbard*, 59 Ohio St. 199, 53 N. E. 47; *Platt v. Craig*, 66 Ohio St. 75, 63 N. E. 594; *State v. Cowles*, 64 Ohio St. 162, 59 N. E. 895; *Blankenburg v. Block*, 200 Pa. St. 629, 50 Atl. 198.

⁴³ *State v. Cooley*, 56 Minn. 540, 58 N. W. 150. The facts of this case are stated *ante*, § 196. A parallel case existed in Philadelphia and was decided differently, but the decision was also put upon other grounds. *Perkins v. Philadelphia*, 156 Pa. St. 539, 27 Atl. 356; *Perkins v. Philadelphia*, 156 Pa. St. 554, 27 Atl. 356.

⁴⁴ *Devine v. Board of Commissioners*, 84 Ill. 590; *Montgomery v.*

Commonwealth, 91 Pa. St. 125; *Davis v. Clark*, 106 Pa. St. 377; *Westerfield, Ex parte*, 55 Cal. 550; *Koser, Ex parte*, 60 id. 177, 191; *Commonwealth v. Patten*, 88 Pa. St. 258; *State v. Herrmann*, 75 Mo. 840; *Rutherford v. Heddens*, 82 id. 388; *Mason v. Spencer*, 85 Kan. 512; *State v. Squires*, 26 Iowa, 340; *Stange v. Dubuque*, 62 Iowa, 303, 17 N. W. 518; *State ex rel. v. Mitchell*, 31 Ohio St. 592; *Frye v. Partridge*, 82 Ill. 267; *Pritz, Ex parte*, 9 Iowa, 80; *Davis v. Woolnough*, id. 104; *State v. Graham*, 16 Neb. 74; *Phillips v. Schumacher*, 10 Hun, 405; *Healey v. Dudley*, 5 Lans. 115; *Hodges v. Baltimore Pass. Ry. Co.*, 58 Md. 603; *Central Iowa R. R. Co. v. Board of Super-*

legislation for individual cases.⁴⁵ It is equally fatal to such legislation though it be general in form. If a statute is plainly intended for a particular case, and looks to no broader application in the future, it is special or local, and, if such laws are prohibited on the subject to which it relates, is unconstitutional.⁴⁶ The lineaments by which such cases are to be distinguished are usually so special that a law confined thereto would be anticipated to have no effect from the antecedent improbability of such a case arising. When, therefore, it is found to fit such a special case, it is deemed to have been enacted solely for it.⁴⁷

An act came in question which gave the right to file a mechanic's lien in certain cases, but contained a proviso excluding from its operation counties having a population of over two hundred thousand inhabitants. It was held void as a local and special law, and therefore within the constitutional inhibition of such laws "authorizing the creation, extension or impairing of liens."⁴⁸ The classification of counties by population and the passage of laws applicable to a certain class only have within reasonable limits and for some purposes been admitted upon the assumption that counties having a small population may ultimately have one

visors, 67 Iowa, 199, 25 N. W. 128, 22 Am. & Eng. R. R. Cas. 223; Kimball v. Rosendale, 42 Wis. 407, 24 Am. Rep. 421; Kerrigan v. Force, 68 N. Y. 381. See Desmond v. Dunn, 55 Cal. 242; Earle v. Board of Education, id. 489.

⁴⁵ Nevil v. Clifford, 63 Wis. 435, 24 N. W. 65; Williams v. Bidleman, 7 Nev. 68; Montgomery v. Commonwealth, 91 Pa. St. 125; Frye v. Partridge, 82 Ill. 267.

⁴⁶ State ex rel. v. Mitchell, 31 Ohio St. 592; State v. Herrmann, 75 Mo. 340; McCarthy v. Commonwealth, 110 Pa. St. 248, 2 Atl. 428, 14 Am. & Eng. Corp. Cas. 271;

Hammer v. State, 44 N. J. L. 667; Devine v. Board of Commissioners, 84 Ill. 590; Davis v. Clark, 106 Pa. St. 377; Commonwealth v. Patten, 88 Pa. St. 258; Frye v. Partridge, 83 Ill. 267; Hallock v. Hollingshead, 49 N. J. L. 64; Hudson Co. Freeholders v. Buck, id. 228, 7 Atl. 860; State v. Boyd, 19 Nev. 43, 5 Pac. 735; Adams v. Smith, 6 Dak. 94, 50 N. W. 720; Topeka v. Gillett, 33 Kan. 431, 4 Pac. 800; State v. Downs, 60 Kan. 788, 57 Pac. 962; Sutton v. State, 96 Tenn. 696, 36 S. W. 697, 33 L. R. A. 589.

⁴⁷ Id.

⁴⁸ Davis v. Clark, 106 Pa. St. 377.

much larger.⁴⁹ In the case under consideration, however, two counties had, at the time the law in question was passed, a greater population than two hundred thousand. As it could not be assumed that their population would ever fall below that limit they were permanently excluded from the operation of the act. The court say: "It was not then a general act. It did apply to a great number of counties; but there is no dividing line between a local and a general statute. It must be either one or the other. If it apply to the whole state, it is general. If to a part, it is local. As a legal principle it is as effectually local when it applies to sixty-five counties out of sixty-seven as if it applied to one county only. The exclusion of a single county from the operation of the act makes it local."⁵⁰ Where an act provided exceptionally for the holding of courts in all counties of more than sixty thousand inhabitants, adding restrictively, "in which there shall be any city incorporated, at the time of the passage of this act, with a population exceeding three thousand inhabitants, situate at a distance from the county seat of more than twenty-seven miles by the usually traveled road," the court held the act local; that it applied and was intended to apply to only one county.⁵¹ A law to authorize the taking of public burial places for school purposes, which was so hedged about and qualified by conditions as to evidently be intended to fit one particular place and which could in any event apply to but few, was held special and void.⁵² An act of Wisconsin to authorize the building of viaducts across gullies, running streams or railroad tracks by the counties of the state, and the issuing of county bonds therefor, conferred the authority upon all counties, but pro-

⁴⁹ *Post*, § 217.

⁵⁰ *Montgomery v. Commonwealth*, 91 Pa. St. 125; *Devine v. Board of Commissioners*, 84 Ill. 590; *McCarthy v. Commonwealth*, 110 Pa. St. 243; *Matter of Henneberger*, 155 N. Y. 420, 50 N. E. 61, 42 L. R. A. 132.

⁵¹ *Commonwealth v. Patten*, 88 Pa. St. 258; *State v. Herrmann*, 75 Mo. 340; *Weinman v. Wilkinsburg, etc. Ry. Co.*, 118 Pa. St. 192, 12 Atl. 288.

⁵² *York School District's Appeal*, 169 Pa. St. 70, 32 Atl. 92.

vided that the viaduct should not be less than one thousand feet long, sixty feet wide and eighteen feet high, and should cost not less than \$80,000, and the bonds should not exceed one-fifth of one per cent. of the taxable property of the county. By reason of these limitations the act could only apply in Milwaukee county and was held void.⁸³ So of an act authorizing counties, which had entered into a contract for building a court-house, incurred obligations thereunder prior to the passage of the act and had expended at least \$7,000 thereunder, to issue bonds to an amount not exceeding \$35,000, to meet such obligations.⁸⁴

§ 217. *Classification of counties and legislation in respect thereto.*—Counties may be classified according to population on the same principles as apply to municipalities for the purpose of legislation having a necessary relation to population.⁸⁵ The supreme court of Pennsylvania, after referring to the principles applicable to the classification of cities, says: "The same principle must make classification constitutional as to the other political and municipal divi-

⁸³ *Wagner v. Milwaukee County*, 119 Wis. 601, 88 N. W. 577.

⁸⁴ *Hetland v. County Commissioners*, 89 Minn. 492, 95 N. W. 805.

⁸⁵ *People v. Onahan*, 170 Ill. 449, 48 N. E. 1003; *Burton Stock Car Co. v. Traeger*, 187 Ill. 10, 58 N. E. 418; *Koester v. Board of Com'rs*, 44 Kan. 141, 24 Pac. 65; *Stone v. Wilson*, 19 Ky. L. R. 126, 39 S. W. 49; *State v. Sullivan*, 72 Minn. 126, 75 N. W. 8; *Murray v. Board of County Com'rs*, 81 Minn. 859, 84 N. W. 103, 83 Am. St. Rep. 879, 51 L. R. A. 828; *State v. Westfall*, 85 Minn. 497, 89 N. W. 175, 89 Am. St. Rep. 571; *Dunne v. Kansas City Cable Ry. Co.*, 181 Mo. 1, 82 S. W. 641; *Coombs Commission Co. v. Block*, 180 Mo. 668, 82 S. W. 1189; *Sherwood v. Grand Ave. Ry. Co.*, 182 Mo. 339, 83

S. W. 774; *State v. Slover*, 134 Mo. 607, 86 S. W. 50; *State v. Frank*, 60 Neb. 827, 83 N. W. 74; *State v. Frank*, 61 Neb. 679, 85 N. W. 956; *Mortland v. State*, 52 N. J. L. 521, 20 Atl. 673; *State v. Taylor*, 68 N. J. L. 276, 53 Atl. 392; *People v. Dunn*, 157 N. Y. 528, 52 N. E. 572, 43 L. R. A. 247; *Lloyd v. Smith*, 176 Pa. St. 213, 35 Atl. 199; *Commonwealth v. Anderson*, 178 Pa. St. 171, 35 Atl. 632; *Commonwealth v. McCarthy*, 18 Phila. 646; *Morrison v. Bachert*, 1 Pa. Co. Ct. 153; *State v. Berkeley*, 64 S. C. 194, 41 S. E. 961; *Minnehaha County v. Thorne*, 6 S. D. 449, 61 N. W. 688; *Peterson v. State*, 104 Tenn. 127, 56 S. W. 834; *Condon v. Maloney*, 106 Tenn. 82, 65 S. W. 871.

ions of the state when considered in their governmental capacity. Classification of counties is therefore as permissible as classification of cities, and the legislature may determine what differences in situation, circumstances and needs call for a difference of class, subject to the supervision of the courts as the final interpreters of the constitution to see that it is actual classification, and not special legislation under that guise."⁵⁶

If the classification is founded on correct principles, it is no objection that a class may contain but one county at the time the act is passed.⁵⁷ An act relating to the fees of county officers applied to counties of over 100,000 population and not more than 185,000, of which there was only one. The act was assailed on the ground particularly that it did not include all counties over 100,000. But the court held it could not say that there was no ground for a distinction and sustained the act.⁵⁸ An act regulating fees of county officers except in counties containing more than

⁵⁶ Lloyd v. Smith, 176 Pa. St. 213, 218, 35 Atl. 199.

⁵⁷ People v. Onahan, 170 Ill. 449, 48 N. E. 1003; Stone v. Wilson, 19 Ky. L. R. 126, 39 S. W. 49; State v. Sullivan, 73 Minn. 126, 75 N. W. 8; State v. Berkeley, 64 S. C. 194, 41 S. E. 961; Condon v. Maloney, 108 Tenn. 82, 65 N. W. 871.

⁵⁸ State v. Sullivan, 73 Minn. 126, 75 N. W. 8. The court says: "The only thing that could cast any possible doubt on the propriety of the basis adopted in this act is the fact that it excludes from the class counties having more than 185,000 inhabitants. It is urged that this is an arbitrary classification, not founded upon any apparent natural reason suggested by a difference between the situation and circumstances of the counties included and those ex-

cluded from the class, or which suggests the necessity or propriety of different legislation with respect to them. The subject of classification by population is so largely a matter of policy, and the considerations which enter into it are so numerous and complex, that the legislature must necessarily be allowed a large discretion in the matter; and the courts ought not to hold a statute invalid or special legislation unless it appears, very clearly, that the basis of classification adopted is purely arbitrary. We cannot say that there may not be some natural reason, founded on a difference in situation and circumstances, why counties having over 185,000 inhabitants should be excluded from the class, as well as those having less than 100,000, or why counties having a population

150,000 inhabitants or less than 10,000 was held to be not classification but a mere exclusion of certain counties and void.⁵⁹ An act applicable to counties having a population of from 35,190 to 35,200 was held evasive and special.⁶⁰

Classification by population has been held proper for the purpose of regulating the fees and compensation of county officers,⁶¹ for regulating the manner of selecting jurors,⁶² for preventing stock from running at large,⁶³ for regulating the manner of assessing property for taxation,⁶⁴ providing for laying out and regulating the public roads,⁶⁵ and for the administration of county affairs.⁶⁶ An act providing for the Torrens system of registering land titles, applicable only to counties having over 75,000 inhabitants, was held valid.⁶⁷

between those limits should not have different legislation in respect to salaries of county officers."

⁵⁹ *Morrison v. Backert*, 112 Pa. St. 322, 5 Atl. 739.

⁶⁰ *Hixon v. Burson*, 54 Ohio St. 470, 43 N. E. 1000. To same effect, *Owen County Com'rs v. Spangler*, 159 Ind. 575, 65 N. E. 743.

⁶¹ *Stone v. Wilson*, 19 Ky. L. R. 126, 39 S. W. 49; *State v. Sullivan*, 72 Minn. 126, 75 N. W. 8; *State v. Frank*, 60 Neb. 327, 83 N. W. 74; *State v. Frank*, 61 Neb. 679, 85 N. W. 956; *Hudson County v. Clarke*, 65 N. J. L. 271, 47 Atl. 478; *Commonwealth v. McCarthy*, 18 Phila. 646; *Morrison v. Bachert*, 1 Pa. Co. Ct. 153; *Minnehaha County v. Thorne*, 6 S. D. 449, 61 N. W. 688.

⁶² *People v. Onahan*, 170 Ill. 449, 48 N. E. 1003; *Dunne v. Kansas City Cable Ry. Co.*, 131 Mo. 1, 32 S. W. 641; *Coombs Commission Co. v. Block*, 130 Mo. 668, 32 S. W. 1139; *Sherwood v. Grand Ave. Ry. Co.*, 132 Mo. 339, 33 S. W. 774; *State v. Slover*, 134 Mo. 607, 36 S. W. 50; *State v. Berkeley*, 64 S. C. 194, 41 S.

E. 961. In the last case the act was applicable to counties having a city of 40,000 inhabitants.

⁶³ *Peterson v. State*, 104 Tenn. 127, 56 S. W. 834.

⁶⁴ *Burton Stock Car Co. v. Traeger*, 187 Ill. 10, 58 N. E. 418.

⁶⁵ *Condon v. Maloney*, 108 Tenn. 82, 65 S. W. 871.

⁶⁶ *Mortland v. State*, 52 N. J. L. 521, 20 Atl. 673; *Lloyd v. Smith*, 176 Pa. St. 213, 35 Atl. 199.

⁶⁷ *State v. Westfall*, 85 Minn. 437, 89 N. W. 175, 89 Am. St. Rep. 571. The court says: "We are of the opinion that the facts that the largest cities of the state are within the limits of the classified counties, that the platted portions thereof embrace a greater number of subdivisions and parcels of land than the less densely populated portions of the state, that the individual owners of the land are more numerous, the value thereof much greater, and that the records of the evidence of the titles thereto rapidly increase in volume and become more complex with the in-

An act to provide for the treatment of indigent inebriates at the public expense in counties of 50,000 population or more was held special and void.⁶⁸ Counties may be classified according to assessed valuation for the purpose of regulating the fees of county officers.⁶⁹

An act on a subject of a general nature which applies to one county only, or which excludes one or more counties from its operation, is local and special and void.⁷⁰ The fees and compensation of county officers is held to be a subject of a general nature,⁷¹ and so is the erection of county buildings.⁷² It is held that an act is not rendered special or

crease of population, whereby the risks of defective titles, and expenses for abstracts thereof, and the delays and difficulties in transferring real estate, are proportionately increased, were proper for the consideration of the legislature in determining whether there was a practical necessity or propriety for the classification in question and justify it." p. 440.

⁶⁸ *Murray v. County Com'rs*, 81 Minn. 359, 84 N. W. 103, 88 Am. St. Rep. 379, 51 L. R. A. 828.

⁶⁹ *Harwood v. Wentworth*, 163 U. S. 547, 16 S. C. Rep. 890, 40 L. Ed. 1069. Such classification is expressly authorized by the constitution of Wyoming. *Guthrie v. Converse County*, 7 Wyo. 95, 50 Pac. 229. In this case it was held that when a county changed its class during an official's incumbency his salary did not change.

⁷⁰ *Henderson v. Koenig*, 168 Mo. 356, 68 S. W. 72; *Singleton v. Eureka County*, 22 Nev. 91, 35 Pac. 838; *State v. Bergen County*, 52 N. J. L. 302, 19 Atl. 718; *Matter of Henneberger*, 155 N. Y. 420, 50 N. E. 61, 42 L. R. A. 132; *Mott v. Hubbard*, 59

Ohio St. 199, 53 N. E. 47; *State v. Brown*, 60 Ohio St. 462, 54 N. E. 525; *Commonwealth v. Carey*, 2 Pa. Co. Ct. 298; *Nance v. Anderson County*, 60 S. C. 501, 39 S. E. 5; *Sutton v. State*, 96 Tenn. 696, 36 S. W. 697, 33 L. R. A. 589; *Chicago & N. W. R. R. Co. v. Forest County*, 95 Wis. 60, 70 N. W. 77; *Adams v. Smith*, 6 Dak. 94, 50 N. W. 720; *State v. Otis*, 68 N. J. L. 64, 52 Atl. 305; *State v. Ellet*, 47 Ohio St. 90, 23 N. E. 931, 21 Am. St. Rep. 772; *Commissioners v. Rosch Bros.*, 50 Ohio St. 103, 33 N. E. 408, 40 Am. St. Rep. 653; *Silberman v. Hay*, 59 Ohio St. 682, 53 N. E. 258; *Matter of Roberg*, 18 Ohio C. C. 867; *U. S. Mort. & T. Co. v. Wood*, 19 Ohio C. C. 358.

⁷¹ *State v. Krost*, 140 Ind. 41, 39 N. E. 46; *State v. Board of Com'rs*, 140 Ind. 506, 40 N. E. 113; *State v. Yatea*, 66 Ohio St. 546, 64 N. E. 570 (overruling *Pearson v. Stephens*, 56 Ohio St. 126, 46 N. E. 511); *State v. Garver*, 60 Ohio St. 555, 64 N. E. 573; *Milwaukee County v. Isenring*, 109 Wis. 9, 35 N. W. 181, 53 L. R. A. 635. See *State v. Garver*, 13 Ohio C. D. 140.

⁷² *State v. Brown*, 60 Ohio St. 462, 54 N. E. 525.

local because it provides that it shall not apply to counties where the subject-matter is regulated by prior special acts.⁷³

The following acts were held not local or special: An act permitting a higher rate of taxation for road purposes in counties having an assessed valuation of \$15,000,000 or over and also having more than one hundred and fifty miles of macadamized and graveled roads;⁷⁴ an act in regard to the construction of highways and bridges and limited to counties adjoining a city of 1,000,000 or more inhabitants;⁷⁵ an act to provide for the acquisition of certain rights in fresh-water lakes and in adjoining lands for public use and limited to counties containing a lake of one hundred acres area or over;⁷⁶ an act relating to poor relief by counties which excepted cities from its operation and thereby excepted a county co-extensive with a city;⁷⁷ an act organizing certain new counties and giving the first county commissioners a longer term than was provided by the general law.⁷⁸ But in case of the act last referred to, a provision limiting the rate of taxation as to such new counties was held special and void.⁷⁹

The constitution of California provides for a division of counties into classes, according to population, for the purpose of fixing the fees and compensation of county officers.⁸⁰ It is held, construing the provision, that it is mandatory, that such classification must be made as a condition to valid legislation on the subject,⁸¹ that it rests with

⁷³ *Mattox v. Knox*, 96 Ga. 403, 23 S. E. 807; *Cheltenham Township Road*, 140 Pa. St. 136, 21 Atl. 233. See *Stewart v. Collier*, 91 Ga. 117, 17 S. E. 279.

⁷⁴ *State v. Arnold*, 136 Mo. 446, 38 S. W. 79.

⁷⁵ *Treanor v. Elchhorn*, 74 Hun, 53, 26 N. Y. S. 814.

⁷⁶ *Albright v. Sussex Co. Lake & Park Commission*, 69 N. J. L. 523, 53 Atl. 612.

⁷⁷ *Rose v. Beaver County*, 204 Pa. St. 372, 54 Atl. 263.

⁷⁸ *Spencer v. Griffith*, 74 Minn. 55, 76 N. W. 1018. See *Schweiss v. District Court*, 28 Nev. 226, 45 Pac. 289, 34 L. R. A. 602.

⁷⁹ *State v. Walker*, 88 Minn. 295, 86 N. W. 104.

⁸⁰ Art. XI, sec. 5; *Cody v. Murphy*, 89 Cal. 523, 26 Pac. 1081.

⁸¹ *Dwyer v. Parker*, 115 Cal. 544, 47 Pac. 372; *Knight v. Martin*, 128 Cal. 245, 60 Pac. 849.

the legislature to say how many classes there shall be,⁸² and that legislation upon other subjects for the classes so established is unauthorized and void.⁸³ Some officers may be compensated by fees and others by a salary, without violating the rule of uniformity.⁸⁴ The legislature must fix the salary and not delegate it to the county boards.⁸⁵

An act provided that hospitals established in cities of 20,000 inhabitants or more should receive from the county a certain sum for the support of poor patients under treatment in such hospitals. The act was held to make an arbitrary classification of counties for the purpose of imposing such liability and to be void.⁸⁶ Where an act was so framed as to require administration to be granted under certain conditions in counties of 200,000 population to the public administrator and in all other counties under the same conditions to the widow or next of kin, it was held that the classification had no reasonable relation to the purpose of the act and that it was special legislation and void.⁸⁷ The administration of estates is a subject of a general nature and laws in relation thereto must be of uniform operation.⁸⁸ Hence a law providing for the appointment of certain corporations as administrators, executors, etc., and applicable only to certain counties, is unconstitutional.⁸⁹

§ 218. *Schools, school districts and school affairs.*—In Ohio it is held that the creation of school districts is a sub-

⁸² *Summerland v. Bioknell*, 111 Cal. 567, 44 Pac. 232.

⁸³ *San Luis Obispo Co. v. Graves*, 84 Cal. 71, 23 Pac. 1032; *Welsh v. Bramlett*, 98 Cal. 219, 33 Pac. 66; *Walser v. Austin*, 104 Cal. 126, 37 Pac. 869; *Bloss v. Lewis*, 109 Cal. 498, 41 Pac. 1081; *Marsh v. Hanley*, 111 Cal. 368, 43 Pac. 976; *Hale v. McGettigan*, 114 Cal. 112, 45 Pac. 1049; *San Francisco v. Broderick*, 125 Cal. 168, 57 Pac. 887; *Pratt v. Brown*, 135 Cal. 649, 67 Pac. 1082.

⁸⁴ *Vail v. San Diego County*, 126 Cal. 35, 58 Pac. 392.

⁸⁵ *People v. Johnson*, 95 Cal. 471, 31 Pac. 611; *Dougherty v. Austin*, 94 Cal. 601, 28 Pac. 834, 29 Pac. 1092, 16 L. R. A. 161.

⁸⁶ *York Hospital & Dispensary Ass'n v. York County*, 13 Pa. Dist. Ct. 539.

⁸⁷ *Strong v. Dignan*, 207 Ill. 365.

⁸⁸ *Schumacher v. McCallip*, 69 Ohio St. 500.

⁸⁹ *Id.*

ject of a general nature which must be regulated by general laws of uniform operation, and that a special act creating a particular school district is local and void.⁸⁰ The same ruling has been made in Oklahoma.⁸¹ The constitution of Pennsylvania forbids local or special laws "regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes."⁸² It is held that school districts may be classified as well as municipalities, and that districts coterminous with cities of the third class may constitute a class for legislation concerning their government and affairs.⁸³ There would seem to be no reason why school districts may not be classified according to population for purposes of their administration and government, as well as municipalities.⁸⁴

An act providing a method for the government of schools in municipalities divided into wards, different from that in other localities was held not to be a legitimate classification.⁸⁵ School districts whose territory has been changed by a change of municipal boundaries may constitute a class for legislation with reference to the conse-

⁸⁰ *State v. Spellmire*, 67 Ohio St. 77, 65 N. E. 619, overruling *State v. Shearer*, 46 Ohio St. 275, 20 N. E. 335, and confirming *State v. Powers*, 38 Ohio St. 54. The following are earlier cases following *State v. Powers*: *State v. Board of Education*, 7 Ohio C. C. 152; *State v. Board of Education*, 3 Ohio C. D. 703.

⁸¹ *Territory v. School District*, 10 Okl. 556, 84 Pac. 241. But where there is no constitutional provision applicable except that requiring general laws of uniform operation, other states have held that a law creating a particular school district, or applicable to only one, is valid. *Chicago, R. I. & P. Ry. Co. v. Avoca*, 99 Iowa, 556, 68 N. W. 881;

Eichholtz v. Martin, 53 Kan. 486, 86 Pac. 1064.

⁸² Art. 3, sec. 52.

⁸³ *Commonwealth v. Gilligan*, 195 Pa. St. 504, 46 Atl. 124; *Commonwealth v. Shires*, 195 Pa. St. 515, 46 Atl. 1102; *Commonwealth v. Howell*, 195 Pa. St. 519, 46 Atl. 1102; *Commonwealth v. Hitchens*, 200 Pa. St. 508, 50 Atl. 91; *Commonwealth v. Guthrie*, 203 Pa. St. 202, 52 Atl. 254; *School District v. Smith*, 195 Pa. St. 515, 46 Atl. 127. Compare *Chalfant v. Edwards*, 173 Pa. St. 246, 33 Atl. 1048.

⁸⁴ *Lewis v. Jersey City*, 66 N. J. L. 582, 50 Atl. 846.

⁸⁵ *State v. Miller*, 100 Mo. 439, 13 S. W. 677; *State v. Long*, 21 Mont. 26, 52 Pac. 645.

quences of such change.⁹⁶ An act to pension teachers is of a general nature, and its operation cannot be limited.⁹⁷ A law annexing school districts under the general law to school districts under special charters was held special and void.⁹⁸

§ 219 (126). **Railroads.**—Railroad companies have for some purposes constituted a class for general legislation; for other purposes such companies may be divided into subclasses, and legislation in regard to one of such classes made to differ from that applied to another. An Iowa act divided the railroads of the state into classes according to business in regulating rates of freight. It was held not in conflict with the constitution, requiring laws of a general nature to have a uniform operation throughout the state.⁹⁹ Waite, C. J., said: "It operates uniformly on each class, and this is all the constitution requires. . . . It is very clear that a uniform rate of charges for all railroad companies in the state might operate unjustly upon some. It was proper, therefore, to provide in some way for an adaptation of the rates to the circumstances of the different roads; and the general assembly, in the exercise of its legislative discretion, has seen fit to do this by a system of classification." An act provided that "Every railroad company shall be liable for all damages sustained by any person, including employees of the company, in consequence of any neglect of the agents, or by any mismanagement of the engineers or other employees of the corporation, to any person sustaining such damage." It was objected to this law that it was limited in its operation to railroad companies, and subjected them to a rule or liability from which other persons, both natural and artificial, were exempt. The objection was held untenable. The court said: "These laws are general and uniform, not because they operate upon every per-

⁹⁶ Sugar Notch Borough, 192 Pa. St. 349, 43 Atl. 985.

⁹⁸ In re School Districts, 26 Colo. 136, 56 Pac. 178.

⁹⁷ State v. Kuntz, 21 Ohio C. C. 261.

⁹⁹ C., B. & Q. R. R. Co. v. Iowa, 94 U. S. 155, 24 L. Ed. 94.

son in the state, for they do not, but because every person who is brought into the relation and circumstances provided for is affected by it. They are general and uniform in their operation upon all persons in the like situation; and the fact of their being general and uniform is not affected by the number of persons within the scope of their operation."¹

A Missouri statute gave an exceptional measure of damages against railroad companies for injury to animals. It was objected that the act was partial in regard to the rule of damages, because if any private person, or any other person than a railroad corporation, caused a like damage, the act did not apply, and the most that could be recovered would be the value of the animal. The objection was overruled. The court said: "This right of action is given to all persons who may be thus injured. It is given as well to any association of people, and to railroad corporations whose stock may be injured by a railroad."² Another act put all owners and operators of railroads, whether natural persons, companies or corporations, on an equal footing, by making the term "railroad corporation" to include them. Though directed against railroads alone, while no other common carriers are brought within its operation, it was not partial for that reason. And the court thus remarks upon it: "Had the legislature deemed it essential to the protection of human life and private property they would doubtless have extended the statute to carriers by coach and water; but as the class of property and human life protected by this provision of the statute is not exposed to like perils incident to coach and water travel, the occasion and necessity for so extending the statute did not exist. Class legislation is not necessarily obnoxious to the constitution.

¹ *McAnnich v. Miss. & M. R. R. Co.*, 20 Iowa, 838; *United States Express Co. v. Ellyson*, 28 Iowa, 370; *Thomason v. Ashworth*, 73 Cal. 73; *Phillips v. Missouri Pac. R. R. Co.*, 86 Mo. 540, 24 Am. & E. R. Cas. 368; *State v. Wilcox*, 45 Mo. 458; *State v. Spauld*, 37 Minn. 322, 34 N. W. 164; *Bannon v. State*, 49 Ark. 167, 4 S. W. 635; *Dow v. Beldelman*, 49 Ark. 325.

² *Humes v. Mo. Pac. Ry. Co.*, 83 Mo. 221.

It is a settled construction of similar constitutional provisions that a legislative act which applies to and embraces all persons who are or who may come into like situation and circumstances is not partial."³ And a like conclusion was arrived at in respect to an act which gave a justice an exceptional jurisdiction in the particular class of actions just mentioned.⁴

The following acts relating to railroads were held not to be special or class legislation: An act authorizing the appointment of a receiver of any railroad which has neglected for ten days to run trains over any part of its road, and which excepted roads at seaside resorts, not exceeding four miles in length, intended merely for the transportation of summer travelers and tourists;⁵ exempting railroad employees from working on the public roads;⁶ an act requiring railroads at all stations where there are telegraph offices to post information as to whether trains are on time or not;⁷ an act giving an action against railroad companies for negligently causing the death of any one not an employee of the company;⁸ making a class of railroads extending into two or more counties for the purpose of collecting delinquent taxes;⁹ an act which provides for assessing railroads by a state board and all other property by county assessors;¹⁰ an act providing for the assessment of railroads omitted in specified years;¹¹ an act imposing a

³ *Humes v. Missouri, etc. Ry. Co.*, 82 Mo. 221; *Snyder v. Warford*, 11 Mo. 518; *Merritt v. Knife Falls B. Corp.*, 84 Minn. 245; *Central Trust Co. v. Sloan*, 65 Iowa, 655; *Peoria, etc. R. R. Co. v. Duggan*, 109 Ill. 587, 50 Am. Rep. 619.

⁴ *Phillips v. Mo. Pac. Ry. Co.*, 86 Mo. 540.

⁵ *Delaware Bay & Cape May R. R. Co. v. Markley*, 45 N. J. Eq. 189, 16 Atl. 486.

⁶ *State v. Womble*, 112 N. C. 862, 17 S. E. 491, 19 L. R. A. 827.

⁷ *Pennsylvania R. R. Co. v. State*, 142 Ind. 428, 41 N. E. 937.

⁸ *Schoolcraft v. Louisville & N. R. Co.*, 92 Ky. 233, 17 S. W. 567.

⁹ *People v. Central Pac. R. R. Co.*, 105 Cal. 576, 38 Pac. 905. Compare *People v. Central Pac. R. R. Co.*, 83 Cal. 393, 23 Pac. 802.

¹⁰ *Sawyer v. Dooley*, 21 Nev. 890, 32 Pac. 487.

¹¹ *Bloxham v. Florida, etc. R. R. Co.*, 35 Fla. 625, 17 So. 902.

privilege tax upon all railroads not paying an *ad valorem* tax;¹² an act authorizing passenger railways in cities of the first class to use other power than horse power, with the consent of the city;¹³ acts requiring persons or corporations operating electric cars,¹⁴ or cars propelled by steam, cable or electricity,¹⁵ to protect the motorman from the weather. An act imposing upon railroads a double liability for damages by fire was held valid and not class legislation.¹⁶ So of acts imposing upon railroads a special liability for injuries to stock by reason of a failure to fence their tracks.¹⁷ But an act making railroad companies absolutely liable for stock killed was held to be class legislation.¹⁸ An act provided for the presentation of certain claims against railroad companies by filing the same with a station agent and enacted that, if the same were not paid within thirty days and suit was brought thereon and sustained, the plaintiff should recover an attorney's fee. This was held to be class legislation and void.¹⁹

§ 220. Particular acts — Courts and judicial procedure. An act permitting plaintiff to expedite a cause was held not local or special because the same privilege was not accorded the defendant.²⁰ So of an act requiring the plaintiff to give bond for costs in actions for slander and libel.²¹ An

¹² *Knoxville & Ohio R. R. Co. v. Harris*, 99 Tenn. 684, 43 S. W. 115. *Schimmele v. Chicago, etc. R. R. Co.*, 34 Minn. 216, 25 N. W. 347;

¹³ *Reeves v. Phila. Traction Co.*, 152 Pa. St. 153, 25 Atl. 516. *Missouri Pac. Ry. Co. v. Humes*, 115 U. S. 512, 5 S. C. Rep. 110, 29 L. Ed. 463;

¹⁴ *State v. Nelson*, 52 Ohio St. 88, 39 N. E. 22, 26 L. R. A. 817; *State v. Whitaker*, 160 Mo. 59, 60 S. W. 1068. *Minneapolis & St. L. R. R. Co. v. Beckwith*, 129 U. S. 26, 9 S. C. Rep. 207, 32 L. Ed. 585.

¹⁵ *State v. Smith*, 58 Minn. 35, 59 N. W. 545. ¹⁸ *Catril v. Union Pac. R. R. Co.*, 2 Idaho, 576, 21 Pac. 416.

¹⁶ *Atchison, T. & S. F. Ry. Co. v. Matthews*, 174 U. S. 96, 19 S. C. Rep. 609, 43 L. Ed. 909; *Atchison, T. & S. F. Ry. Co. v. Matthews*, 58 Kan. 447, 49 Pac. 602. ¹⁹ *Gulf, Colo. & S. F. Ry. Co. v. Ellis*, 165 U. S. 150, 17 S. C. Rep. 255, 41 L. Ed. 666.

²⁰ *Louisville & N. A. & C. R. R. Co. v. Wallace*, 186 Ill. 87, 26 N. E. 493, 11 L. R. A. 787.

²¹ *Smith v. McDermott*, 93 Cal. 421, 29 Pac. 34. To same effect,

act permitting summons to be served in counties adjoining that in which it was issued in actions of trespass and for injuries to land, conversion of crops, and claims for labor performed by individuals and firms, was held to give special privileges to certain suitors and to be void as class legislation.²² The following were held void as being special or class legislation: An act as to witness fees in criminal cases, and limited to counties of one class;²³ that courts shall take judicial notice of the ordinances of cities of the fifth class;²⁴ prohibiting appeals from the circuit court where the recovery is \$75 or less, and which does not apply to county courts having concurrent jurisdiction;²⁵ creating a justice court for a particular town;²⁶ providing a special mode of moving for a new trial in proceedings under the irrigation law;²⁷ that the judge of the criminal court in a particular county may be called in by the circuit judge of any county to hold the circuit court in such county, and in such case that he shall have the powers of a circuit judge;²⁸ conferring upon district courts power to remove police magistrates in metropolitan cities;²⁹ an act creating a juvenile court.³⁰

§ 221. Same — Insurance and insurance companies. — Different regulations may be applied to the old line life insurance companies than to those doing business on the assessment plan.³¹ An act providing that insurance companies

Kling v. Packet Co., 101 Tenn. 99, 118 Cal. 508, 89 Pac. 769, 45 Pac. 46 S. W. 24. 823, 1047.

²² *O'Connell v. Menominee Bay Shore Lumber Co.*, 118 Mich. 124, 71 N. W. 442. ²⁸ *State v. Hill*, 147 Mo. 63, 47 S. W. 798.

²³ *Turner v. County of Siaklyou*, 109 Cal. 832, 42 Pac. 434. ²⁹ *Gordon v. Moores*, 61 Neb. 345, 85 N. W. 293.

²⁴ *Tulare v. Herren*, 126 Cal. 226, 58 Pac. 530. ³⁰ *Mansfield's Case*, 23 Pa. Supr. Ct. 224.

²⁵ *McClain v. Williams*, 11 S. D. 60, 75 N. W. 891. ³¹ *Haytle v. Knights Templars, etc. Co.*, 139 Mo. 416, 41 S. W. 461; *Northwestern Masonic Aid Ass'n v. Waddell*, 136 Mo. 628, 40 S. W. 648; *Fidelity & Casualty Co. v. Freeman*, 109 Fed. 847, 48 C. C. A. 692.

²⁶ *Miner v. Justice's Court*, 121 Cal. 264, 58 Pac. 795.

²⁷ *Cullen v. Glendora Water Co.*

should pay the full amount of the loss not exceeding the amount of the policy, and that all stipulations in the policy to the contrary should be void, and excepting from its provisions insurance on cotton in bales, was held not to be class legislation.²² An act exempting insurance companies from suit for ninety days after notice was held not to be void as class legislation.²³ Foreign insurance companies may be treated as a class for legislative purposes.²⁴

§ 222. Same — Building and loan associations. — “The operation of building and loan associations proper, where they adhere to the basic principles of their organization, differ so radically from ordinary loan transactions as to afford a proper basis for classification, and to justify the legislature in making a separate class of them;”²⁵ hence a statutory exemption of them from the operation of the usury laws is constitutional.²⁶ Such an exemption is neither special nor class legislation.²⁷

§ 223. Same — Wages — Labor — Employees. — Laws to secure payment of the wages of laborers employed in certain industries, and affecting all employers alike, are held not to be class legislation.²⁸ But when the benefit is confined to laborers employed by corporations, such laws are void as class legislation.²⁹ Laws regulating the payment of wages by certain classes of corporations, such as mining and manufacturing companies, are held to be class legisla-

²² *Dugger v. Insurance Co.*, 95 N. W. 373; *Livingston L. & B. Tenn.* 245, 82 S. W. 5, 28 L. R. A. 796. *Ass'n v. Drummond*, 49 Neb. 200.

²³ *Christie v. Life Indemnity & Invest. Co.*, 82 Iowa, 860, 48 N. W. 94. *Trust Co. v. Whitbed*, 2 N. D. 82.

²⁴ *Kennedy v. Agricultural Ins. Co.*, 185 Pa. St. 179, 30 Atl. 724. *49 N. W. 318.*

²⁵ *People v. Butler St. Foundry & Iron Co.*, 201 Ill. 236, 66 N. W. 349. *Fitch v. Applegate*, 24 Wash. 25, 64 Pac. 147; *Hoffa v. Person*, 1 Pa. Supr. Ct. 357; *Ripley v. Evans*, 87 Mich. 217, 49 N. W. 504.

²⁶ *Zenith B. & L. Ass'n v. Helmbach*, 77 Minn. 97, 79 N. W. 602. *Johnson v. Goodyear Min. Co.*, 127 Cal. 4, 59 Pac. 304, 78 Am. St. Rep. 17, 47 L. R. A. 838; *Slocum v. Bear Valley Irr. Co.*, 123 Cal. 555, 53 Pac. 403, 68 Am. St. Rep. 63.

²⁷ *Iowa Savings & L. Ass'n v. Heidt*, 107 Iowa, 297, 77 N. W. 1050, 48 L. R. A. 689; *People's B. & L. Ass'n v. Billing*, 104 Mich. 186, 63

tion.⁴⁰ Acts regulating the liability of railroad companies to their employees for the negligence of fellow-servants are not class legislation,⁴¹ but otherwise if they apply to all corporations, as in such case individuals and corporations carrying on the same business would be subjected to different rules.⁴² Such an act applying to railroad companies is held not to include street railroads,⁴³ nor a company organized under the general railroad law but engaged in operating a street railway.⁴⁴

Acts making eight hours a legal day's work in certain kinds of employment are held void for the same reason;⁴⁵ but such a law applicable to laborers employed by the state or by counties or municipal corporations or by contractors for public works was held valid.⁴⁶ An act which made it a

⁴⁰ *Braceville Coal Co. v. People*, 147 Ill. 66, 35 N. E. 62, 37 Am. St. Rep. 206, 22 L. R. A. 840; *Dixon v. Poe*, 159 Ind. 492, 65 N. E. 518; *State v. Loomis*, 115 Mo. 807, 22 S. W. 850, 21 L. R. A. 789; *State v. Goodwill*, 33 W. Va. 179, 10 S. E. 285, 25 Am. St. Rep. 863, 6 L. R. A. 847. And see *State v. Fire Creek Coal & Coke Co.*, 38 W. Va. 188, 10 S. E. 288, 25 Am. St. Rep. 891.

⁴¹ *Pittsburgh, C., C. & St. L. Ry. Co. v. Montgomery*, 152 Ind. 1, 49 N. E. 582, 71 Am. St. Rep. 801; *Powell v. Sherwood*, 162 Mo. 605, 63 S. W. 485; *Cambron v. Omaha, etc. R. R. Co.*, 165 Mo. 543, 65 S. W. 745; *Callahan v. St. Louis Merchants' Bridge Terminal R. R. Co.*, 170 Mo. 473, 71 S. W. 208; *Sams v. St. Louis & M. R. R. Co.*, 174 Mo. 53, 73 S. W. 686; *Missouri Pac. Ry. Co. v. Mackey*, 127 U. S. 205, 8 S. C. Rep. 1161, 32 L. Ed. 107; *Minneapolis & St. L. Ry. Co. v. Herrick*, 127 U. S. 210, 8 S. E. Rep. 1176, 32 L. Ed. 109; *Tullis v. Lake Erie & W. R. R. Co.*, 175 U. S. 848, 20 S. C. Rep.

186, 44 L. Ed. 192; *Cincinnati H. D. R. R. Co. v. Thiebaud*, 114 Fed. 918, 52 C. C. A. 538.

⁴² *Ballard v. Miss. Cotton Oil Co.*, 81 Miss. 507. And see *Tullis v. Lake Erie & W. R. R. Co.*, 175 U. S. 848, 20 S. C. Rep. 136, 44 L. Ed. 192.

⁴³ *Funk v. St. Paul City Ry. Co.*, 61 Minn. 485, 68 N. W. 1099.

⁴⁴ *Sams v. St. Louis & M. R. R. Co.*, 174 Mo. 53, 73 S. W. 686.

⁴⁵ *In re House Bill No. 208*, 31 Colo. 29, 39 Pac. 328; *In re Morgan*, 28 Colo. 415, 58 Pac. 1071, 77 Am. St. Rep. 269, 47 L. R. A. 52; *Low v. Rees Printing Co.*, 41 Neb. 127, 59 N. W. 382, 43 Am. St. Rep. 670, 24 L. R. A. 702. An act making ten hours a day's work for street railroad employees and excepting existing contracts from its operation was held valid in *Opinion to the Governor*, 24 R. I. 608.

⁴⁶ *In re Dalton*, 61 Kan. 257, 59 Pac. 386; *State v. Atkin*, 64 Kan. 174, 67 Pac. 519; *Atkin v. Kansas*, 191 U. S. 207.

penal offense for any officer or agent of a corporation to discharge an employee on account of his connection with a labor organization, or to interfere to prevent such relation, was held special legislation and void because it did not apply to all employers.⁴⁷ But where such a law applies to all employers it is valid.⁴⁸

A statute provided that when a corporation discharged an employee for cause, the unpaid wages of such employee then earned at the contract rate, without abatement or deduction, should become due and payable on the day of such discharge. It was held to apply to all of a class and therefore not to be class legislation.⁴⁹

§ 224. Same — Mines.— An act to regulate coal mines is not rendered local or special because it exempts from the operation of its provisions those employing but few men, such as ten or twenty.⁵⁰ Anthracite mines and bituminous mines may be legislated for as distinct classes.⁵¹ An act requiring mine operators to furnish safeguards for employees

⁴⁷ *Commonwealth v. Clark*, 14 Pa. Supr. Ct. 485. The court says: "To be more explicit, it extends protection to the employees of corporations in their right to form or join labor organizations, whilst denying the same protection to the employees of individuals, firms and limited partnerships; it deprives corporations of the right to discharge employees for a certain cause, even though this right be expressly reserved in the contract of employment; whilst leaving individuals, firms and limited partnerships free to discharge their employees for the same cause or at will, provided no contract or law against conspiracy be violated. As has been well said, arbitrary selection can never be justified by calling it classification." A sim-

ilar law was held invalid in Wisconsin as an interference with the liberty of contract. *State v. Krentzberg*, 114 Wis. 580, 90 N. W. 1098, 91 Am. St. Rep. 934.

⁴⁸ *State v. Justus*, 85 Minn. 279, 88 N. W. 759, 89 Am. St. Rep. 550.

⁴⁹ *Leep v. Railway Co.*, 58 Ark. 407, 25 S. W. 75, 41 Am. St. Rep. 109, 28 L. R. A. 264. But see cases cited in the preceding notes of this section.

⁵⁰ *Woodson v. State*, 69 Ark. 521, 65 S. W. 465; *Durkin v. Kingston Coal Co.*, 171 Pa. St. 198, 33 Atl. 237; *Commonwealth v. Jones*, 4 Pa. Supr. Ct. 363.

⁵¹ *Durkin v. Kingston Coal Co.*, 171 Pa. St. 198, 33 Atl. 237; *Commonwealth v. Jones*, 4 Pa. Supr. Ct. 363; *Read v. Clearfield Co.*, 12 Pa. Supr. Ct. 412.

was held not class legislation.⁵² But an act in regard to the weighing of coal at mines, which applied only to mines whose product was shipped by rail or water, was held special and void.⁵³

§ 225. Same — Sunday laws.— A law which prohibits the carrying on of business on Sunday, but excepts certain trades, such as hotels, drug stores, livery-stables, undertakers, etc., is held to be valid legislation in some states,⁵⁴ but class legislation in others.⁵⁵ So of a law which prohibits the business of barbering on Sunday. Some courts hold such a law special or class legislation,⁵⁶ and others the reverse.⁵⁷ A New York statute which prohibited barbering on Sunday, except in the cities of New York and Saratoga, was held not to be class legislation by reason of the exception.⁵⁸

§ 226. Same — Allowing plaintiff an attorney's fee.— A statute allowing the plaintiff to recover an attorney's fee in a suit for wages was held not to be special or class legislation in Illinois.⁵⁹ Statutes allowing the plaintiff to recover an attorney's fee in suits upon insurance policies have been held valid in many cases.⁶⁰ Statutes allowing the plaintiff

⁵² *Davis Coal Co. v. Pollard*, 158 Ind. 607, 62 N. E. 492, 92 Am. St. Rep. 312.

⁵³ *Harding v. People*, 160 Ill. 459, 43 N. E. 624, 53 Am. St. Rep. 844, 32 L. R. A. 445.

⁵⁴ *Searoy v. State*, 40 Tex. Crim. App. 460, 50 S. W. 699, 51 S. W. 1119, 53 S. W. 844; *State v. Nichols*, 28 Wash. 626, 69 Pac. 372.

⁵⁵ *State v. Sopher*, 25 Utah, 318, 71 Pac. 482.

⁵⁶ *Eden v. People*, 161 Ill. 296, 43 N. E. 1108, 52 Am. St. Rep. 365, 32 L. R. A. 659; *State v. Granneman*, 132 Mo. 326, 38 S. W. 784; *Tacoma v. Krech*, 15 Wash. 296, 46 Pac. 255.

⁵⁷ *Ex parte Northrop*, 41 Ora. 489, 69 Pac. 445; *People v. Bellet*, 99 Mich.

151, 57 N. W. 1094, 41 Am. St. Rep. 589, 22 L. R. A. 696; *State v. Petit*, 74 Minn. 376, 77 N. W. 225; *Breyer v. State*, 102 Tenn. 103, 50 S. W. 769. But in the latter state a law which forbade barbers to keep open their baths on Sunday was held class legislation. *Ragio v. State*, 86 Tenn. 272, 6 S. W. 401.

⁵⁸ *People v. Harnor*, 1 App. Div. 459, 37 N. Y. S. 814.

⁵⁹ *Vogel v. Pekoc*, 157 Ill. 339, 42 N. E. 386, 30 L. R. A. 491.

⁶⁰ *British Am. Ass'n Co. v. Bradford*, 60 Kan. 82, 55 Pac. 332; *Hartford Fire Ins. Co. v. Warbritton*, 66 Kan. 93, 71 Pac. 278; *Insurance Co. of North Am. v. Bachler*, 44 Neb. 549, 63 N. W. 911; *Lancashire Ins.*

an attorney's fee in suits against railroad companies for injuries to stock are held valid in some cases and void in others.⁶¹ There is a similar difference of opinion as to the validity of statutes allowing the plaintiff an attorney's fee in mechanic's lien suits.⁶²

§ 227 (125). Same—Criminal laws.—Criminal laws must be general and have a uniform operation.⁶³

In *Ex parte Falk*⁶⁴ it was held that a statute providing punishment for an act which is *malum in se* wherever committed, being a law of a general nature, cannot be made local on the ground that the inhibited act is a greater evil in a large city than in other parts of the state. The court, by Okey, J., say: "The act inhibited . . . [having burglars' tools in his possession] is not merely immoral but plainly vicious; it is one of very serious and dangerous character; it is not merely *malum prohibitum* but *malum in se*; and it is a wrong to society — not merely to Cincinnati; not merely in cities, but in every county, in every township, in fact in every part of the state; and no reason can be given why it might not properly be made punishable by

Co. v. Bush, 60 Neb. 116, 82 N. W. 818; *Farmers' & Merchants' Ins. Co. v. Dobney*, 62 Neb. 218, 86 N. W. 1070; *Union Central Life Ins. Co. v. Chowning*, 86 Tex. 654, 26 S. W. 982, 24 L. R. A. 504; *Farmers' & Merchants' Ins. Co. v. Dobney*, 189 U. S. 301, 23 S. C. Rep. 565; *Fidelity Mut. Life Ass'n v. Mettler*, 185 U. S. 308, 22 S. C. Rep. 662.

⁶¹ Held valid: *Peoria, D. & E. Ry. Co. v. Duggan*, 109 Ill. 537; *Perkins v. St. Louis, etc. R. R. Co.*, 103 Mo. 52, 15 S. W. 320, 11 L. R. A. 426; *Briggs v. St. Louis, etc. Ry. Co.*, 111 Mo. 168, 20 S. W. 32; *Railroad Co. v. Crider*, 91 Tenn. 489, 19 S. W. 618; *Gulf, Colo. & S. F. Ry. Co. v. Ellis*, 87 Tex. 19, 26 S. W. 985. Held to be class legislation and void: *Wilder*

v. Chicago, etc. R. R. Co., 70 Mich. 382, 38 N. W. 289; *Schut v. Railway Co.*, 70 Mich. 433, 38 N. W. 291; *Lafferty v. Railway Co.*, 71 Mich. 35, 38 N. W. 660; *Grand Rapids Chair Co. v. Runnels*, 77 Mich. 104, 48 N. W. 1006.

⁶² Held valid: *Wortman v. Kleinschmidt*, 12 Mont. 316, 30 Pac. 280; *Helena Steam Heating & Supply Co. v. Wells*, 16 Mont. 65, 40 Pac. 78. Held void: *Los Angeles Gold Min. Co. v. Campbell*, 13 Colo. App. 1, 56 Pac. 246; *Burleigh Bldg. Co. v. Merchant Brick, etc. Co.*, 13 Colo. App. 455, 59 Pac. 82.

⁶³ *Ex parte Westerfield*, 55 Cal. 550; *Ex parte Koser*, 60 id. 187, 191.

⁶⁴ 42 Ohio St. 638.

statute throughout the whole state as a criminal offense. Perhaps it is true that such acts may be a greater evil in large cities; possibly a greater evil in Cincinnati than in any other part of the state. But the same thing may be truthfully said with respect to many, perhaps a majority, of criminal offenses. Take the crime of arson. It is a grievous evil everywhere, and under some circumstances a most atrocious crime. It is an evil alike in town and country, but a far greater evil in a large compact city like Cincinnati than in a small village or hamlet or in a sparse rural district. But does this reason, or any other with which it may be supplemented, afford any ground, in view of our constitution, for punishing under local law? So, a person having possession of instruments for counterfeiting, or custody of a large quantity of counterfeit money, may be in a better position to carry on a nefarious business successfully, and therefore more likely to occasion harm in a crowded city than in the rural portions of the state; but a general law upon the subject, applicable to the whole state, has effected all that can be done by legislation to remedy the evil."⁶⁶

⁶⁶ This opinion is instructive in the remarks which follow: "To the end that these statements may not mislead, it is proper to say that the general assembly is clothed in the most general terms with legislative power, and this, unrestrained by other provisions, would authorize the legislature to pass local penal statutes of every sort, and it will be seen that there is no inhibition against the passage of penal statutes which are local and even special in character. Hence it may be that a statute punishing even with death any person who should break and enter the state treasury in Columbus, Ohio, with intent to steal, or, having so broken and entered, rob the treasurer of state,

would not be subject to any constitutional objection, however objectionable it might be on the ground of propriety. And other and perhaps more apt illustrations of the principle may be suggested. On the other hand, a statute, general in form, prohibiting the sale of liquors in the immediate vicinity of any college would perhaps be regarded as a general and therefore valid enactment, in force throughout the state, although every county does not contain a college. . . . Attention has been called to the fact that in *State v. Brewster*, 39 Ohio St. 658, 658, it was held that the power to classify municipal corporations expressly authorized by the constitution is ad-

§ 228. Same—Miscellaneous.—An act regulating the methods and times of catching fish in the waters of the state was held not to be class legislation because it made different regulations for different waters, or because it excepted certain waters from its operation.⁶⁶ An act declaring what shall constitute a legal and sufficient fence and requiring all fields and inclosures to be inclosed therewith was held to be a law of a general nature. It did not extend to the whole state; it was not framed to have a uniform operation throughout the state, and was therefore held unconstitutional.⁶⁷ An act prohibiting sheep from running at large in all the counties of the state except one was held liable to the same objection.⁶⁸ So of an act relating to libel and confined to publishers of newspapers.⁶⁹ Tax laws must provide a uniform rule.⁷⁰ An act to regulate the collection

dressed in a large degree to the conscience and judgment of the legislature, and 'that statutory provisions with respect to any such class are, for governmental purposes, general legislation,' and not in conflict with the constitution. This we held to be a proper construction of article 13, section 6, which is in no sense in conflict with article 2, section 26. And in this connection it is proper to say that in *Morgan v. Nolte*, 37 Ohio St. 23, we sustained the validity of a conviction under an ordinance of the city of Cincinnati, passed by virtue of Revised Statutes, sections 1692, 2108, prescribing punishment by fine and imprisonment against any person who, being a known thief, should be found in that city; and there being no general statute punishing the act of having possession of burglars' tools, it is true, perhaps, that the substance of section 1924, if adopted in due form as an ordinance of the city of Cincinnati,

under authority of sections 1692 and 2108, would be entirely valid. Nor does this militate against anything I have said; for the constitutional provision we are considering would not, under such circumstances, have any application." See *Williams v. People*, 24 N. Y. 405; *Budd v. State*, 3 Humph. 483.

⁶⁶ *Bittenhaus v. Johnston*, 93 Wis. 588, 66 N. W. 805, 32 L. R. A. 380; *Commonwealth v. Drain*, 99 Ky. 162, 35 S. W. 269. See *Peters v. State*, 96 Tenn. 682, 36 S. W. 399, 33 L. R. A. 114.

⁶⁷ *Darling v. Rodgers*, 7 Kan. 592, *Frost v. Cherry*, 122 Pa. St. 417, 15 Atl. 782.

⁶⁸ *Robinson v. Perry*, 17 Kan. 248; *Utsey v. Hiott*, 30 S. C. 860, 9 S. E. 338.

⁶⁹ *Allen v. Pioneer Press*, 40 Minn. 117, 41 N. W. 936, 12 Am. St. Rep. 707, 3 L. R. A. 532. See *Cobb v. Bord*, 40 Minn. 479, 42 N. W. 396.

⁷⁰ *State v. Cumberland & Penn. R. R. Co.*, 40 Md. 22; *State v. Ster-*

of taxes provided that it should not apply to any taxes the collection of which was regulated by a local law. This was held not to make the act local or special, as such would be the effect of the act without such provision.⁷¹ A statute requiring the assessor to collect the tax on personal property at the rate of the preceding year at the time of making the assessment in cases where the same were not secured by real estate was held not to be a special law, as such unsecured taxes made a proper class.⁷² An act to enforce the payment of delinquent taxes applied only to counties wherein the amount delinquent on a certain date exceeded three mills on the dollar of the assessed valuation of the real property of the county. This was held to be an arbitrary classification and the act was held void.⁷³ A law imposing a tax on estates of over \$3,000 in counties of over 150,000 inhabitants was held special and void.⁷⁴

Local option laws are not special legislation,⁷⁵ nor are laws which make different regulations regarding the liquor traffic for municipalities of different population.⁷⁶ A statute, which forbade the sale of liquor within one and one-half miles of a national soldiers' home and within one mile of

ling, 20 Md. 502; *Tyson v. State*, 28 id. 587; *State Board of Assessors v. Central R. R. Co.*, 48 N. J. L. 146, 4 Atl. 578; *Hammer v. State*, 44 N. J. L. 667; *State v. California Min. Co.*, 15 Nev. 234; *Bright v. McCullough, Treasurer*, 27 Ind. 223. See *Central Iowa R. R. Co. v. Board of Supervisors*, 22 Am. & Eng. R. R. Cas. 223, 67 Iowa, 199, 25 N. W. 128; *People ex rel. v. Wallace*, 70 Ill. 660; *Chancellor v. Elizabeth*, 64 N. J. L. 502, 45 Atl. 795; *Kniseley v. Cotterel*, 196 Pa. St. 614, 46 Atl. 861, 50 L. R. A. 86.

⁷¹ *Evans v. Phillippi*, 117 Pa. St. 226, 11 Atl. 630; *Commonwealth v. Lyter*, 162 Pa. St. 50, 29 Atl. 352. See *Evans v. Witmer*, 2 Pa. Co. Ct. 612.

⁷² *Rode v. Siebe*, 119 Cal. 518, 51 Pac. 869, 39 L. R. A. 842; *Pacific Postal Tel. Cable Co. v. Dalton*, 119 Cal. 604, 51 Pac. 1072.

⁷³ *Duluth Banking Co. v. Koon*, 81 Minn. 486, 84 N. W. 6.

⁷⁴ *State v. Mann*, 76 Wis. 469, 45 N. W. 51.

⁷⁵ *State v. Forkner*, 94 Iowa, 1, 62 N. W. 688; *Lloyd v. Dollison*, 13 Ohio C. D. 571; *ante*, § 163.

⁷⁶ *State v. Pond*, 93 Mo. 606, 6 S. W. 469; *Ex parte Swan*, 96 Mo. 44, 9 S. W. 10; *State v. Moore*, 107 Mo. 78, 16 S. W. 937; *State v. Wingfield*, 115 Mo. 428, 22 S. W. 863; *State v. Staats*, 54 N. J. L. 286, 23 Atl. 667.

a state soldiers' home was held not to be class legislation.⁷⁷ So of a statute which forbade the granting of licenses to sell liquor by county boards within two miles of any city or village, but excepted counties of 150,000 population.⁷⁸

The laying out, construction and repair of public roads and bridges is held to be a subject of a general nature, which must be provided for by general laws of uniform operation throughout the state, and laws applicable to a particular road or county are local and special and void.⁷⁹ Different provisions may be made for working the roads in cities and towns than is applied to the rural districts.⁸⁰

Acts giving special privileges to union soldiers and sailors or exempting them from burdens or conditions which apply to others are class legislation and void.⁸¹ An act to protect

⁷⁷ *Driggs v. State*, 52 Ohio St. 37, 38 N. E. 882.

⁷⁸ *Henzinger v. State*, 39 Neb. 653, 58 N. W. 194; *Shannon v. State*, 39 Neb. 658, 58 N. W. 196; *Soehl v. State*, 39 Neb. 659, 58 N. W. 196; *Rowels v. State*, 39 Neb. 659, 58 N. W. 197.

⁷⁹ *Commissioners v. State*, 50 Ohio St. 653, 35 N. E. 887; *State v. Commissioners*, 54 Ohio St. 333, 43 N. E. 587; *Hixon v. Burson*, 54 Ohio St. 470, 48 N. E. 1000; *State v. Davis*, 55 Ohio St. 15, 44 N. E. 511; *Platt v. Craig*, 66 Ohio St. 75, 63 N. E. 594; *Grove v. Leidy*, 9 Ohio C. C. 272; *Commissioners v. State*, 12 Ohio C. C. 200; *Maxwell v. Tillamook County*, 20 Ore. 495, 26 Pac. 803. In *Hixon v. Burson*, 54 Ohio St. 470, 483, 48 N. E. 1000, the court says: "That the subject of roads and highways is capable of being legislated upon by general laws having a uniform operation throughout the state is conclusively shown by the fact that such laws were

passed at the second session of the general assembly after the adoption of the constitution, and remain in force in substantially the same form to this day, and no local or special act on the subject of roads was passed for many years thereafter." See *Condon v. Maloney*, 108 Tenn. 82, 65 S. W. 871.

⁸⁰ *McGinnis v. Ragsdale*, 116 Ga. 245, 42 S. E. 492.

⁸¹ *State v. Garbroski*, 111 Iowa, 496, 82 N. W. 959, 82 Am. St. Rep. 524; *Brown v. Russell*, 166 Mass. 14, 43 N. E. 1007, 32 L. R. A. 253; *Matter of Keyner*, 148 N. Y. 219, 42 N. E. 667, 35 L. R. A. 447. See *State v. Miller*, 66 Minn. 90, 68 N. W. 732; *State v. O'Connor*, 54 N. J. L. 36, 22 Atl. 1091; *State v. Shedroi*, 75 Vt. 277. In the case first cited the court says: "The classification here attempted rests solely on a past and completed transaction, having no relation to the particular legislation enacted. All citizens are divided into two classes,—those who

manufacturers, bottlers and dealers in ale, porter, lager beer, soda, mineral water and other beverages from the loss of their casks, barrels, kegs, bottles and boxes, and which gave to such manufacturers and dealers special and peculiar privileges for the protection and recovery of their barrels, bottles, etc., was held to be special legislation and void.⁸² The following were held to be void as being special or class legislation: An act to provide for free employment agencies, which denied the benefit of the agencies to employers whose men were out on a strike or lockout;⁸³ an act relating to obstructions in streams and applying only to specified counties;⁸⁴ an act forbidding the peddling of certain merchandise without a license, but permitting any resident of a town having a place of business therein and paying taxes to the amount of \$25 on his stock in trade, to peddle such goods in his own town without a license.⁸⁵ But it is held proper to make a distinction between those peddling goods of their own production and those peddling goods produced by others.⁸⁶

The following were held not to be special or class legislation: An act giving a preference to depositors who are not stockholders, in case of insolvency of bank;⁸⁷ an act to regulate commission merchants who receive farm products for

served in the army and navy thirty-five years ago, and those who did not. True, as suggested, the veterans came from no particular class; but the trouble with this statute is that it attempts to make of them a class in legislation, in the operation of which there can be no substantial distinction between them and others. In present conditions and circumstances there are no differences between them in their relation to society and the administration of the law, and other citizens of the state." p. 500.

⁸² *Lippman v. People*, 175 Ill. 101, 51 N. E. 872; *Horwich v. Walker-Gordon Lab. Co.*, 205 Ill. 497, 68 N. E. 938.

⁸³ *Mathews v. People*, 202 Ill. 389, 67 N. E. 28.

⁸⁴ *State v. Hammond*, 66 S. C. 219, 44 S. E. 797; *State v. Hammond*, 66 S. C. 300, 44 S. E. 933.

⁸⁵ *State v. Mitchell*, 97 Me. 66, 53 Atl. 887.

⁸⁶ *Rosenbloom v. State*, 64 Neb. 842, 89 N. W. 1058.

⁸⁷ *Murphy v. Pacific Bank*, 180 Cal. 542, 62 Pac. 1059.

sale on commission and which excepts those dealing in grain, live stock and dressed meat;⁸⁸ an act giving a lien for supplies furnished to transportation, mining and manufacturing companies;⁸⁹ an act making it a penal offense to take a note for a patent right unless the note states on its face that it was given for such consideration;⁹⁰ an act forbidding bets on horse races unless made in an inclosed track where the race is run;⁹¹ an act in reference to "blind pigs," and applying only to prohibition districts;⁹² an act imposing a tax on bicycles in certain counties;⁹³ an act to regulate the practice of barbering, which in effect made three classes of barbers: (1) those in cities of the first, second and third classes, (2) those in other cities and in incorporated towns, and (3) all other barbers, and which made different regulations for each class.⁹⁴

The question of special or class legislation is sometimes raised in connection with anti-trust laws, union label acts, inheritance tax laws and medical practice acts, and cases on these different laws are referred to in the margin;⁹⁵ and

⁸⁸ *Lasher v. People*, 188 Ill. 226, 55 N. E. 663, 75 Am. St. Rep. 103, 47 L. R. A. 802.

⁸⁹ *Virginia Development Co. v. Crozer Iron Co.*, 90 Va. 126, 17 S. E. 806, 44 Am. St. Rep. 893.

⁹⁰ *State v. Cook*, 107 Tenn. 499, 64 S. W. 720.

⁹¹ *Debardelaben v. State*, 99 Tenn. 649, 42 S. W. 684.

⁹² *State v. Stoffels*, 89 Minn. 205, 94 N. W. 675.

⁹³ *Ellis v. Frazier*, 88 Ore. 462, 63 Pac. 642.

⁹⁴ *State v. Sharples*, 81 Wash. 191, 71 Pac. 737.

⁹⁵ *Anti-trust laws*.—*Brown v. Jacobs Pharmacy Co.*, 115 Ga. 429, 41 S. E. 553, 90 Am. St. Rep. 126; *People v. Butler Street Foundry & Iron Co.*, 201 Ill. 236, 66 N. E. 349; *State v. Smiley*, 65 Kan. 240, 69 Pac.

199; *State v. Aetna Ins. Co.*, 150 Mo. 113, 51 S. W. 413; *State v. Schlitz Brewing Co.*, 104 Tenn. 715, 59 S. W. 1033, 78 Am. St. Rep. 941; *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 22 S. C. Rep. 431, 46 L. Ed. 679; *Union Sewer Pipe Co. v. Connolly*, 99 Fed. 354; *State v. Continental Tobacco Co.*, 177 Mo. 1.

Union label acts.—*State v. Bishop*, 128 Mo. 373, 31 S. W. 9, 40 Am. St. Rep. 569, 29 L. R. A. 200; *Schmalz v. Wooley*, 56 N. J. Eq. 649, 39 Atl. 539; *Commonwealth v. Norton*, 16 Pa. Supr. Ct. 423.

Inheritance tax laws.—*In re Wilmerding*, 117 Cal. 281, 49 Pac. 181; *Estate of Stanford*, 126 Cal. 112, 54 Pac. 259, 58 Pac. 462; *In re Inheritance Tax*, 28 Colo. 492, 48 Pac. 535; *Drew v. Tift*, 79 Minn. 175, 81 N. W. 339, 79 Am. St. Rep. 446, 47 L. R.

some miscellaneous cases are added without giving the particular points decided.*

§ 229. **Amendatory and curative acts.**—Existing general laws required to have a uniform operation cannot be

A. 525; *State v. Henderson*, 160 Mo. 190, 60 S. W. 1099; *State v. Ferris*, 53 Ohio St. 314, 41 N. E. 579; *State v. Allston*, 94 Tenn. 674, 30 S. W. 750, 28 L. R. A. 178; *State v. Clark*, 80 Wash. 489, 71 Pac. 20; *Magown v. Ill. Trust & Sav. Bank*, 170 U. S. 283, 18 S. C. 594, 42 L. Ed. 1087.

Medical practice acts.—*Ex parte McNulty*, 77 Cal. 164, 19 Pac. 237, 11 Am. St. Rep. 257; *Parks v. State*, 159 Ind. 211, 64 N. E. 862; *State v. Bair*, 112 Iowa, 466, 84 N. W. 532, 51 L. R. A. 776; *Iowa Electric Med. College Ass'n v. Board of Med. Examiners*, 87 Iowa, 659, 55 N. W. 24, 20 L. R. A. 355; *Craig v. Medical Examiners*, 12 Mont. 208, 29 Pac. 532; *State v. Hinman*, 65 N. H. 103, 18 Atl. 194; *State v. Pennoyer*, 65 N. H. 113, 18 Atl. 878, 5 L. R. A. 709; *State v. Call*, 121 N. C. 643, 28 S. E. 517; *State v. Randolph*, 23 Ore. 74, 31 Pac. 201, 37 Am. St. Rep. 655; *People v. Hasbrouck*, 11 Utah, 291, 39 Pac. 918; *State v. Carey*, 4 Wash. 424, 30 Pac. 729; *State v. Currena*, 111 Wis. 431, 87 N. W. 551; *Dent v. West Virginia*, 129 U. S. 114, 9 S. C. Rep. 281, 32 L. Ed. 623; *Hawker v. New York*, 170 U. S. 189, 18 S. C. Rep. 578, 42 L. Ed. 1002; *Reetz v. Michigan*, 183 U. S. 505, 23 S. C. Rep. 390.

* *Acts held to be special or class legislation.*—*Farrell v. Board of Trustees*, 85 Cal. 408, 24 Pac. 866; *Eaton v. Brown*, 97 Cal. 371, 31 Pac. 250, 31 Am. St. Rep. 225, 17 L. R. A. 697; *Harlingun v. Doyle*, 134 Cal.

53, 66 Pac. 44; *In re Consolidation of School Districts*, 23 Colo. 499, 48 Pac. 647; *Bailey v. People*, 190 Ill. 28, 60 N. E. 98, 83 Am. St. Rep. 116; *Allardt v. People*, 197 Ill. 501, 64 N. E. 538; *Gilson v. Commissioners*, 128 Ind. 65, 27 N. E. 235, 11 L. R. A. 835; *State v. Santee*, 111 Iowa, 1, 82 N. W. 445, 82 Am. St. Rep. 489, 53 L. R. A. 763; *Brown v. Milliken*, 42 Kan. 769, 23 Pac. 167; *Roberts v. Missouri, etc. Ry. Co.*, 43 Kan. 102, 22 Pac. 1006; *Shawnee County Com'rs v. State*, 49 Kan. 486, 31 Pac. 149; *State v. Mitchell*, 97 Me. 66, 53 Atl. 837; *People v. Berrien Cir. Judge*, 124 Mich. 664, 83 N. W. 594, 83 Am. St. Rep. 352; *State v. Wagener*, 69 Minn. 203, 73 N. W. 67, 65 Am. St. Rep. 565; *State v. Ashbrook*, 154 Mo. 375, 55 S. W. 627, 77 Am. St. Rep. 776; *State v. Bradshaw*, 56 N. J. L. 1, 27 Atl. 939; *Cox v. Truitt*, 57 N. J. L. 635, 31 Atl. 133; *State v. Cramer*, 58 N. J. L. 278, 33 Atl. 201; *Morris v. Ocean Tp.*, 61 N. J. L. 12, 33 Atl. 760; *Grey v. Newark Plank Road Co.*, 65 N. J. L. 51, 46 Atl. 606; *Gilhooley v. Elizabeth*, 66 N. J. L. 484, 49 Atl. 1106; *Coxe v. State*, 144 N. Y. 396, 39 N. E. 400; *People v. Orange County Road Co.*, 175 N. Y. 84, 67 N. E. 129; *State v. Bargas*, 58 Ohio St. 94, 41 N. E. 245, 53 Am. St. Rep. 628; *Guthrie Daily Leader v. Cameron*, 3 Okl. 677, 41 Pac. 635; *Clark's Estate*, 195 Pa. St. 520, 46 Atl. 127, 48 L. R. A. 587; *Strine v. Foltz*, 1 Pa. Co. Ct. 490; *Dean v. Spartanburg*

amended so as to interrupt their uniform operation.^r Though special acts may be repealed, parts of a special or local law may not be repealed where the effect is to in-

County, 59 S. C. 110, 37 S. E. 226; Stratton Claimants v. Morris Claimants, 89 Tenn. 497, 15 S. W. 446; Weaver v. Davidson County, 104 Tenn. 815, 59 S. W. 1105; Janesville v. Carpenter, 77 Wis. 288, 46 N. W. 128, 20 Am. St. Rep. 123, 8 L. R. A. 808; State v. Bell, 91 Wis. 271, 61 N. W. 845; State v. Benzenberg, 101 Wis. 172, 76 N. W. 345; Shaver v. Penn. Co., 71 Fed. 981; Holt v. Mayor, 111 Ala. 369, 19 So. 735; Conlin v. Supervisors, 114 Cal. 404, 46 Pac. 279, 83 L. R. A. 752; Metcalf v. State, 49 Ohio St. 586, 81 N. E. 1070; German Am. Invest. Co. v. Youngstown, 63 Fed. 452.

Acts held not to be special or class legislation.—Ex parte Williams, 87 Cal. 78, 24 Pac. 602, 25 Pac. 248; McDonald v. Conniff, 99 Cal. 386, 84 Pac. 71; Kings County v. Johnson, 104 Cal. 198, 37 Pac. 870; Miles v. Woodward, 115 Cal. 308, 46 Pac. 1076; Tulare County v. May, 118 Cal. 803, 50 Pac. 427; Solano County v. McCudden, 120 Cal. 648, 53 Pac. 218; People v. Lodi High School Dist., 124 Cal. 694, 57 Pac. 660; Fragley v. Phelan, 126 Cal. 883, 58 Pac. 923; People v. King, 127 Cal. 570, 60 Pac. 35; Carpenter v. Furrey, 128 Cal. 665, 61 Pac. 369; Escondido High School Dist. v. Escondido Seminary, 130 Cal. 128, 62 Pac. 401; Estate of Yturburen, 134 Cal. 567, 66 Pac. 729; Jackson v. Baehr, 138 Cal. 266, 71 Pac. 167; Napa State

Hospital v. Yuba County, 138 Cal. 378, 71 Pac. 450; State v. Jacksonville Terminal Co., 41 Fla. 363, 27 So. 221; Columbus So. Ry. Co. v. Wright, 89 Ga. 574, 15 S. E. 293; Singer Mfg. Co. v. Wright, 97 Ga. 114, 25 S. E. 249, 35 L. R. A. 497; National Bank of Augusta v. Augusta Cotton & Compress Co., 104 Ga. 403, 30 S. E. 888; Union Sav. Bank & T. Co. v. Dottenheim, 107 Ga. 606, 34 S. E. 217; Wunderle v. Wunderle, 144 Ill. 40, 83 N. E. 195, 19 L. R. A. 84; Schultz v. Schultz, 144 Ill. 290, 83 N. E. 201, 19 L. R. A. 90; People v. Board of Sup'rs, 185 Ill. 288, 56 N. E. 1044; Arms v. Ayer, 192 Ill. 601, 61 N. E. 851, 85 Am. St. Rep. 357; Downey v. People, 205 Ill. 230, 68 N. E. 807; Taggart v. Claypool, 145 Ind. 590, 44 N. E. 18, 32 L. R. A. 586; State v. Gouss, 85 Iowa, 21, 51 N. W. 1147; Burk v. Putnam, 113 Iowa, 232, 84 N. W. 1053, 86 Am. St. Rep. 372; State v. Haun, 7 Kan. App. 509, 54 Pac. 130; Commonwealth v. Taylor, 101 Ky. 325, 41 S. W. 11; Louisville & J. Ferry Co. v. Commonwealth, 104 Ky. 726, 47 S. W. 877; Hall v. Burlingame, 83 Mich. 438, 50 N. W. 289; People v. Smith, 108 Mich. 527, 66 N. W. 382, 62 Am. St. Rep. 715, 52 L. R. A. 853; People v. Japinga, 115 Mich. 222, 73 N. W. 111; State v. Sheriff, 48 Minn. 236, 71 N. W. 112, 31 Am. St. Rep. 650; State v. Corbett, 57 Minn. 345, 59 N. W. 317, 24 L. R. A. 498; State v.

⁹⁷ State ex rel. Peck v. Riordan, 24 Wis. 484; State ex rel. Keenan v. Supervisors, 25 id. 339; State ex

rel. Walsh v. Dousman, 28 id. 541; Zeigler v. Gaddis, 44 N. J. L. 863

tensify the special character of the act.²⁸ Amendments cannot be made to particular charters where special acts of incorporation are prohibited.²⁹ Nor can special curative acts

McMahon, 62 Minn. 110, 64 N. W. 92; Lommen v. Minneapolis Gas Light Co., 65 Minn. 196, 68 N. W. 53, 60 Am. St. Rep. 450, 33 L. R. A. 437; Cameron v. Chicago, etc. Ry. Co., 63 Minn. 384, 65 N. W. 652; State v. Wise, 70 Minn. 99, 72 N. W. 843; Anderson v. Seymour, 70 Minn. 353, 73 N. W. 171; State v. Wagener, 77 Minn. 483, 80 N. W. 633; State v. Sherod, 80 Minn. 446, 83 N. W. 417, 81 Am. St. Rep. 268, 50 L. R. A. 660; State v. Johnson, 86 Minn. 121, 90 N. W. 161, 1133; Vicksburg v. Sun Mut. Ins. Co., 72 Miss. 67, 16 So. 267; Hoole v. Dorrah, 75 Miss. 257, 22 So. 829; State v. Hughes, 104 Mo. 459, 16 S. W. 489; State v. Orrick, 106 Mo. 111, 17 S. W. 176, 829; State v. Field, 119 Mo. 593, 24 S. W. 752; State v. Yancy, 123 Mo. 891, 27 S. W. 380; State v. Gritzner, 134 Mo. 512, 36 S. W. 39; Daggs v. Orient Ins. Co., 136 Mo. 832, 38 S. W. 85, 58 Am. St. Rep. 633, 35 L. R. A. 227; State v. Lee, 137 Mo. 143, 38 S. W. 533; State v. Durrah, 152 Mo. 522, 54 S. W. 226; Hamman v. Central Coal & C. Co., 156 Mo. 232, 56 S. W. 1091; State v. Thompson, 160 Mo. 833, 60 S. W. 1077, 83 Am. St. Rep. 468; State v. Bixman, 163 Mo. 1, 63 S. W. 823; State v. Harney, 168 Mo. 167, 67 S. W. 620; State v. Gregory, 170 Mo. 598, 71 S. W. 170; Elting v. Hickman, 172 Mo. 237, 72 S. W. 700; Seaboard National Bank v. Wooston, 176 Mo. 49, 75 S. W. 464; In re Dewar's Estate, 10 Mont. 426, 25 Pac. 1026; King v. Pony Gold Min. Co., 24 Mont. 470, 62 Pac. 783; State v. Woodman, 26 Mont. 348, 67 Pac. 1118; Lancaster County v. Trimble, 33 Neb. 121, 49 N. W. 938; State v. Robinson, 35 Neb. 401, 53 N. W. 213; Singer Mfg. Co. v. Fleming, 39 Neb. 679, 53 N. W. 226, 42 Am. St. Rep. 613; Bishop v. Middleton, 43 Neb. 10, 61 N. W. 129, 26 L. R. A. 445; State v. Farmers' & M. Ins. Co., 59 Neb. 1, 80 N. W. 52; State v. Aitken, 62 Neb. 423, 87 N. W. 163; State v. Donovan, 20 Nev. 75, 15 Pac. 783; State v. Beck, 25 Nev. 68, 56 Pac. 1008; State v. Jersey City, 58 N. J. L. 262, 33 Atl. 740; State v. Cline, 62 N. J. L. 489, 41 Atl. 690; Miller v. Camdon, 64 N. J. L. 201, 44 Atl. 832; Reilly v. Gray, 77 Hun, 402, 28 N. Y. S. 811; People v. Warden, 81 Hun, 434, 30 N. Y. S. 1095; State v. Moore, 104 N. C. 714, 10 S. E. 143, 17 Am. St. Rep. 696; Minneapolis & Northern Elevator Co. v. Traill County, 9 N. D. 213, 82 N. W. 727, 50 L. R. A. 266; Oregon City v. Moore, 80 Ore.

²⁸ Blankenburg v. Block, 200 Pa. St. 629, 50 Atl. 198.

²⁹ Ex parte Pritz, 9 Iowa, 30; Davis v. Woolnough, 9 Iowa, 104; McGregor v. Baylies, 19 Iowa, 43; Von Phul v. Hammer, 29 Iowa, 232. But see Brown v. Denver, 7 Colo. 305; Hodges v. Baltimore Union

Pass. R. R. Co., 58 Md. 603; Mayfield v. Elmore, 100 Ky. 417, 33 S. W. 849; Farnsworth v. Lime Rock R. R. Co., 83 Me. 440, 23 Atl. 373; Black River Imp. Co. v. Holway, 87 Wis. 584, 59 N. W. 126; De Hay v. Berkeley County Com'rs, 66 S. C. 227.

be passed to give effect to proceedings defective and void, because taken in the absence of necessary statutory authority,¹ or because not taken in pursuance of statutes in force.²

215, 46 Pac. 1017, 47 Pac. 851; Commonwealth v. Sellers, 130 Pa. St. 32, 18 Atl. 542; In re Registration of Campbell, 197 Pa. St. 581, 47 Atl. 860; New Brighton v. Biddell, 201 Pa. St. 96, 50 Atl. 989; Silkman v. Scranton, 1 Pa. Co. Ct. 329; Keim v. Devitt, 8 Pa. Co. Ct. 250; State v. Duggan, 15 R. I. 403, 6 Atl. 787; Bon Homme County v. Berndt, 13 S. D. 809, 83 N. W. 833, 50 L. R. A. 831; Bon Homme Co. v. Berndt, 15 S. D. 494, 90 N. W. 147; State v. Frost, 103 Tenn. 685, 54 S. W. 986; Peterson v. State, 104 Tenn. 127, 56 S. W. 834; Carroll v. Alsup, 107 Tenn. 257, 64 S. W. 193; Flourney v. Lewis, 2 Tenn. Cas. 45; Nelson v. Troy, 11 Wash. 435, 39 Pac. 974; Lewis County v. Gordon, 20 Wash. 80, 54 Pac. 779; McDaniels v. Connelly, 30 Wash. 549, 71 Pac. 87; McEldowney v. Wyatt, 44

W. Va. 711, 30 S. E. 239, 45 L. R. A. 609; Blue Jacket Con. Copper Co. v. Scherr, 50 W. Va. 533, 40 S. E. 514; State v. Anderson, 90 Wis. 550, 63 N. W. 746; Roane Iron Co. v. Wis. Trust Co., 99 Wis. 273, 74 N. W. 818, 67 Am. St. Rep. 856; Reals v. Smith, 8 Wyo. 159, 56 Pac. 690; McKean v. Archer, 52 Fed. 791; Brattleboro Sav. Bank v. Hardy Tp., 98 Fed. 524; Terre Haute & Indianapolis R. R. Co. v. Cox, 102 Fed. 825, 42 C. C. A. 654; Peacock v. Pratt (C. C. A.), 121 Fed. 772.

¹ Independent School District v. Burlington, 60 Iowa, 500; Stange v. Dubuque, 62 id. 303. See State v. Squires, 26 id. 340.

² Mason v. Spencer, 85 Kan. 512; City of Emporia v. Norton, 13 id. 569.

CHAPTER VII.

AMENDATORY ACTS AND ACTS TO REVIVE, ADOPT OR EXTEND THE PROVISIONS OF OTHER ACTS.

§ 230 (131). The constitutional requirement as to amendments and its purpose.— The requirement is substantially the same in the constitutions of many states — that no law shall be revived or revised or amended by reference to the title only; but the law revived or revised, or the section amended, shall be re-enacted or inserted at length in the new act. The provision is mandatory.¹ This requirement was intended mainly to prevent improvident legislation.² By a prevalent form of amendatory legislation the amendatory act itself was unintelligible; words were stricken out or inserted, additions or substitutions made by mere reference to the place in the old law where the change should be introduced. It required an examination of the former act and a comparison with it of the new act to understand the change. Much confusion and uncertainty ensued from this practice. After repeated amendments in this manner there was much difficulty in determining the state of the law. The requirement was intended to remedy this evil by requiring the legislature changing the law to state it entire in its amended form: the whole act, when revived or revised, or a whole section amended.³

¹ *Tuskaloosa Bridge Co. v. Olmstead*, 41 Ala. 9; *Walker v. Caldwell*, 4 La. Ann. 297. See *Lehman v. McBride*, 15 Ohio St. 578.

² *Lehman v. McBride*, 15 Ohio St. 578, 608.

³ *Timm v. Harrison*, 109 Ill. 593; *Sovereign v. State*, 7 Neb. 409; *Mayor, etc. v. Trigg*, 46 Mo. 288, 290; *People v. Mahaney*, 18 Mich.

484, 497; *Davis v. State*, 7 Md. 151, 159; *Colwell v. Chamberlin*, 48 N. J. L. 387; *Draper v. Falley*, 33 Ind. 465, 469; *Blakemore v. Dolan*, 50 Ind. 194, 208; *State v. Read*, 49 La. Ann. 1535, 22 So. 761; *Warren v. Crosby*, 24 Ora. 558, 34 Pac. 661; *Snyder v. Compton*, 87 Tex. 374, 28 S. W. 1061; *Fletcher v. Prather*, 102 Cal. 413, 36 Pac. 658.

§ 231 (132). **Requisites of amendatory act.**—In the amendment or revision of a statute two things are required: First, the title of the act amended or revised should be referred to; and secondly, the act as revised, or section as amended, should be set forth and published at full length.⁴ A failure to set out the act or section as amended renders the amendatory act void.⁵ It is not necessary in an amendatory statute to set forth the old act or section,⁶ but only to re-enact complete the amended section. It is intended that the law in force after the amendment shall be formulated and stated as it reads entire, and not in shreds.⁷ The supreme court of Louisiana say:⁸ “It was intended that each amendment, and each revisal, should speak for itself; should stand independent and apart from the act revised or the sec-

⁴ *Feibleman v. State ex rel.*, 98 Ind. 521; *Tuskaloosa Bridge Co. v. Olmstead*, 41 Ala. 9; *Rogers v. State*, 6 Ind. 31; *Armstrong v. Berreman*, 18 id. 422; *Sovereign v. State*, 7 Neb. 409, 418; *Walker v. Caldwell*, 4 La. Ann. 297; *Kohn v. Carrollton*, 10 La. Ann. 719; *Jones v. Commissioner*, 21 Mich. 236; *State v. Algood*, 87 Tenn. 163, 10 S. W. 810; *O'Mara v. Wabash R. Co.*, 150 Ind. 648, 50 N. E. 821; *State v. Murlin*, 137 Mo. 297, 88 S. W. 923; *Purvis v. Ross*, 158 Pa. St. 20, 27 Atl. 882; *Smyers v. Beam*, 158 Pa. St. 57, 27 Atl. 884. See *Comstock v. Judge*, 89 Mich. 195; *Earle v. Board of Education*, 55 Cal. 489, 492, 493.

⁵ *Judson v. Bessemer*, 87 Ala. 240, 6 So. 267; *Bates v. State*, 118 Ala. 102, 24 So. 448; *Street v. Hooten*, 131 Ala. 492, 32 So. 580; *State v. Guiney*, 55 Kan. 532, 40 Pac. 926; *In re House Roll* 284, 31 Neb. 505, 48 N. W. 275; *Douglas County v. Hayes*, 52 Neb. 191, 71 N. W. 1023; *Haverly v. State*, 63 Neb. 83, 88 N.

W. 171; *State v. Haverly*, 63 Neb. 87, 88 N. W. 172; *State v. Trenton*, 53 N. J. L. 566, 22 Atl. 731; *State v. Beddo*, 22 Utah, 432, 63 Pac. 96; *Copeland v. Pirie*, 26 Wash. 481, 67 Pac. 227, 90 Am. St. Rep. 769; *In re Buelow*, 98 Fed. 86.

⁶ *Wilkinson v. Ketter*, 59 Ala. 306; *Montgomery v. State*, 107 Ala. 872, 18 So. 157; *Lewis v. State*, 123 Ala. 84, 26 So. 516.

⁷ *Greencastle, etc. Co. v. State ex rel.*, 28 Ind. 382; *Draper v. Falley*, 38 id. 465; *Blakemore v. Dolan*, 50 id. 194; *Rogers v. State*, 6 id. 81; *People v. McCallum*, 1 Neb. 182; *Arnoult v. New Orleans*, 11 La. Ann. 54; *Jones v. Commissioner*, 21 Mich. 236; *City of Portland v. Stock*, 2 Ora. 69; *Colwell v. Chamberlin*, 43 N. J. L. 387; *Lehman v. McBride*, 15 Ohio St. 573, 602; *Mayor v. Trigg*, 46 Mo. 288; *State v. Powder Mfg. Co.*, 50 N. J. L. 75, 11 Atl. 127.

⁸ *Arnoult v. New Orleans*, 11 La. Ann. 54.

tion amended. It was therefore provided that, *in such cases*, if the object was to *revise* an act, it should be *re-enacted* throughout; and if the object was to *amend* an act, then the section amended should be *re-enacted and published*." A recital of the section amended as it stood prior to the amendment will not vitiate the amendatory statute; such recital will be treated as surplusage.⁹ If incorrectly recited it will not affect the validity of the amendatory act.¹⁰ It is not required that the amendatory act state that certain words of a specific section are stricken out and others inserted, and then set out in full the section as amended; it is sufficient if the section as amended be set out in full.¹¹ Sections of the same act not amended need not be set out.¹² When an act is amended by adding new sections thereto, no part of the act amended need be set forth.¹³ So where a section consisted of numerous subdivisions numbered consecutively, it was held that the section could be amended by adding new subdivisions without setting forth the entire section.¹⁴ But where a section not so divided is amended by adding certain words or provisions, the whole section as amended must be set forth.¹⁵

If the reference to the act to be amended in the title and body of the amendatory act is sufficient for identification, it is all that is required, and slight errors will be disregarded.¹⁶

⁹ *Draper v. Falley*, 38 Ind. 465.

¹⁰ *People v. McCallum*, 1 Neb. 182; *School Directors v. School Directors*, 73 Ill. 249.

¹¹ *Morrison v. St. Louis, etc. R. R. Co.*, 96 Mo. 602.

¹² *State v. Thurston*, 92 Mo. 325, 4 S. W. 930, 1 Am. St. Rep. 720; *State v. Hendrix*, 98 Mo. 374, 11 S. W. 728; *Montclair v. New York, etc. Ry. Co.*, 45 N. J. Eq. 486, 18 Atl. 242.

¹³ *Hellman v. Shoultera*, 114 Cal. 130, 45 Pac. 1068; *Edwards v. Denver & R. G. R. Co.*, 13 Colo. 59,

21 Pac. 1011; *State v. Thurston*, 92 Mo. 325, 4 S. W. 930, 1 Am. St. Rep. 720; *State v. Hendrix*, 98 Mo. 374, 11 S. W. 728; *In re White*, 83 Neb. 812, 51 N. W. 287; *Matter of South Market St.*, 76 Hun, 85, 27 N. Y. S. 848; *Berry v. Kansas City, etc. R. Co.*, 52 Kan. 759, 34 Pac. 805, 39 Am. St. Rep. 371.

¹⁴ *Beatrice v. Masslich*, 108 Fed. 748, 47 C. C. A. 657. See *post*, § 236.

¹⁵ *Barrett's Appeal*, 116 Pa. St. 486, 10 Atl. 36.

¹⁶ *Harper v. State*, 109 Ala. 28, 19 So. 857; *Harper v. State*, 109 Ala.

The title of amendatory acts has been treated in a former chapter.¹⁷

§ 232. **Constitutional provisions in Georgia, Nebraska and Tennessee.**—The constitutional provisions in these states differ from the typical form. That of Georgia is as follows: "No law or section of the code shall be amended or repealed by mere reference to its title, or to the number of the section of the code, but the amending or repealing act shall distinctly describe the law to be amended or repealed, as well as the alterations to be made."¹⁸ The cases seem to hold that it is sufficient if the amendatory act gives the title of the act or section of the code to be amended, and sets forth in full the section as amended.¹⁹ In Nebraska the amendatory act must not only set forth the act or section as amended, but must contain an *express* repeal of the old act or section, and the absence of such express repeal renders the amendatory act void.²⁰ The provision in Tennessee is that "all acts which repeal, revive or amend former laws shall recite in their caption or otherwise the title or substance of the law repealed, revived or amended."²¹ A recital of *either* the title or substance is sufficient, and an act to amend a specified section of the code complies with the constitution.²² An act was entitled "An act to amend the

66, 19 So. 901; Fenton v. Yule, 27 Neb. 758, 48 N. W. 1140; State v. Cross, 44 W. Va. 815, 29 S. E. 527; State v. Woolard, 119 N. C. 779, 25 S. E. 719.

¹⁷ *Ante*, § 187 et seq.

¹⁸ Const. 1877, art. 3, sec. 7, pt. 17.

¹⁹ Ryle v. Wilkinson County, 104 Ga. 473, 30 S. E. 934; Puckett v. Young, 112 Ga. 578, 37 S. E. 880; Fite v. Black, 85 Ga. 413, 11 S. E. 782; Gilbert v. Georgia R. R. & B. Co., 104 Ga. 412, 30 S. E. 673.

²⁰ Lancaster County v. Hoagland, 8 Neb. 36; South Omaha v. Taxpayers' League, 42 Neb. 671, 60 N.

W. 957; Grand Island & Wyo. Cent. R. R. Co. v. Swinbank, 51 Neb. 521, 71 N. W. 48; Horkey v. Kendall, 53 Neb. 522, 73 N. W. 953, 68 Am. St. Rep. 623; Reynolds v. State, 58 Neb. 761, 74 N. W. 380; Reid v. Panska, 56 Neb. 195, 78 N. W. 584. The constitutional provision is as follows: "And no law shall be amended unless the new act contain the section or sections so amended and the section or sections so amended shall be repealed." Const. 1875, art. 8, sec. 11.

²¹ Art. 2, sec. 17.

²² Ransome v. State, 91 Tenn. 716,

criminal laws of this state." The body of the act did not purport to amend any particular part or section, but did in fact accomplish such amendment. The act was held void because it did not give either the title or substance of the law amended.²³

§ 233. Amendment of repealed or void act or section.—There is a conflict of authority as to whether a section which has been repealed can be amended. The question usually arises where a section of an act is amended "to read as follows" and is then again amended in the same manner and by the same description, ignoring the first amendment. Most of the older and some of the more recent cases hold that such an amendatory act, or the amendment of a repealed section, is a nullity.²⁴ A repeal by implication is said to stand upon the same footing in this respect as a direct or express repeal.²⁵ "While there is some conflict of opinion

20 S. W. 310; *State v. Runnels*, 92 Tenn. 820, 21 S. W. 665; *State v. Brown*, 103 Tenn. 449, 58 S. W. 727.

²³ *Shelton v. State*, 96 Tenn. 520, 32 S. W. 967.

²⁴ *Draper v. Falley*, 38 Ind. 465; *Town of Martinsville v. Frieze*, id. 507; *Blakemore v. Dolan*, 50 id. 194; *Ford v. Booker*, 53 id. 395; *Cowley v. Rushville*, 60 id. 827; *Niblack v. Goodman*, 67 id. 174; *Clare v. State*, 68 id. 17; *Brokaw v. Board, etc.*, 73 id. 543; *Lawson v. De Bolt*, 78 id. 563; *McIntyre v. Marine*, 98 id. 198; *Hall v. Craig*, 125 Ind. 523, 25 N. E. 538; *Eversole v. Chase*, 127 Ind. 297, 26 N. E. 835; *State v. Board of Com'rs*, 140 Ind. 506, 40 N. E. 118; *Boring v. State*, 141 Ind. 640, 41 N. E. 270; *Louisville & N. R. R. Co. v. East St. Louis*, 184 Ill. 656, 25 N. E. 965; *State v. Burton*, 38 Neb. 823, 51 N. W. 140; *Howlett v. Cheetam*, 17 Wash. 626, 50 Pac. 522; *Burnett v. Turner*, 87 Tenn. 124, 10

S. W. 194; *Robertson v. State*, 12 Tex. App. 541. See *Jones v. Commissioner*, 21 Mich. 286; *Pond v. Maddox*, 38 Cal. 572; *State v. Brewster*, 39 Ohio St. 653; *In re House Resolution*, 12 Colo. 359, 21 Pac. 485; *Lampkin v. Pike*, 115 Ga. 827, 42 S. E. 213, 90 Am. St. Rep. 153. In *Basnett v. Jacksonville*, 19 Fla. 664, an act purported to amend a section which had been amended, and enacted that it should "read as follows;" held to operate to repeal all of the section amended which is not embraced in the amendment. A clerical mistake in the title of the amendatory act referring to the date when the amended act was approved will not vitiate the amendatory statute. *Saunders v. Provisional Municipality*, 24 Fla. 226. See *Wall v. Garrison*, 11 Colo. 515, 19 Pac. 469.

²⁵ "A statute which is repealed by implication has no more existence

on the subject," says the United States court of appeals, "the decided weight of authority and the better opinion is that an amendatory statute is not invalid, though it purport to amend a statute which had previously been amended or for any reason been held invalid."²⁶ This view, we believe, is sustained by the decisions.²⁷

A New York act of 1883 amended section 16 of an act of 1856, relating to schools, "so as to read as follows." In 1864 the legislature passed an act to revise and consolidate the laws relating to public instruction, which repealed all inconsistent laws. It was claimed that the act of 1864 repealed the act of 1856 and that the amendment was void. The court was of a different opinion as to the repeal, but held that even if the act of 1856 was repealed, as claimed, the amendatory act of 1883 was nevertheless valid, and gave their reasons as follows: "The enactment of this law is put in the form of an amendment of a law which was

than if repealed by direct words of a subsequent act of the legislature, and hence an act purporting to amend an act repealed by implication has no more validity than if it purported to amend an act which had theretofore been repealed by a direct repealing clause in a statute." *Eversole v. Chase*, 127 Ind. 297, 300, 26 N. E. 835.

²⁶ *Beatrice v. Masslich*, 108 Fed. 743, 746, 47 C. C. A. 657.

²⁷ *Williamson v. Ketter*, 59 Ala. 306; *State v. Warford*, 84 Ala. 15, 3 So. 911; *Ex parte Pierce*, 87 Ala. 110, 6 So. 392; *Harper v. State*, 109 Ala. 28; *Harper v. State*, 109 Ala. 66, 19 So. 901; *O'Rear v. Jackson*, 124 Ala. 298, 26 So. 944; *Fletcher v. Prather*, 102 Cal. 413, 36 Pac. 658; *Reynolds v. Board of Education*, 66 Kan. 672, 72 Pac. 274; *Lewis v. Brandenburg*, 105 Ky. 14, 47 S. W. 862; *Commonwealth v. Kenneson*,

143 Mass. 418, 9 N. E. 761; *Lang v. Calloway*, 68 Mo. App. 393; *Parlin Orendorf Co. v. Hord*, 78 Mo. App. 279; *Fenton v. Yule*, 27 Neb. 753, 43 N. W. 1140; *State v. Babcock*, 23 Neb. 128, 36 N. W. 348; *Baird v. Todd*, 27 Neb. 782, 43 N. W. 1143; *State v. Partridge*, 29 Neb. 158, 45 N. W. 290; *State v. Bemis*, 45 Neb. 724, 64 N. W. 348; *State v. Kearney*, 49 Neb. 325, 337, 68 N. W. 533, 70 N. W. 255; *State v. Wahoo*, 62 Neb. 40, 86 N. W. 923; *Van Clief v. Var Vechten*, 55 Hun, 467, 8 N. Y. S. 760; *White v. Boody*, 74 Hun, 39, 26 N. Y. S. 94; *People v. Canvassers*, 77 Hun, 872, 28 N. Y. S. 871; *People v. Upson*, 79 Hun, 87, 29 N. Y. S. 615; *Columbia Wire Co. v. Boyce*, 104 Fed. 172, 44 C. C. A. 588; *Heinze v. Butte, etc. Min. Co.*, 101 Fed. 165, 46 C. C. A. 219; *Minnesota & Mont. L. & I. Co. v. Billings*, 111 Fed. 972, 50 C. C. A. 70.

standing upon the statute books, and whether that earlier law, by force of subsequent legislation, had become inoperative is wholly immaterial. The only question is, has the legislature, in the enactment complained of, expressed its purpose intelligibly and provided fully upon the subject. If it has, then its act is valid and must be upheld. That is the case here. The act of 1883 contains all that is provided for in the particular section of the act of 1856, and gives full power to the boards of supervisors with respect to the formation of school commissioners' districts. A law thus explicit and complete may not be disregarded or invalidated because of a possible mistake of the legislature with respect to the existence of the statute in amendment of which the act is passed. It is an enactment of a law, in any view."²⁸

When an act is unconstitutional and void because a part is in conflict with the constitution, the invalid part may be amended so as to remove the conflict; and thereupon the whole act will be valid and of force without re-enactment.²⁹ The supreme court of Arkansas, in one of the cases cited, uses the following language, which is pertinent also to some of the other questions considered in this section: "This amendment, it is contended, is void for the reason that, the original section being void, there was therefore nothing to amend to. Such is a rule applicable to pleadings in court, but by what authority we are compelled to apply it to the

²⁸ *People v. Canvassers*, 143 N. Y. 604, 50 L. R. A. 92; *Lynch v. Murphy*, 119 Mo. 163, 24 S. W. 774; 84, 89, 37 N. E. 649.

²⁹ *Street v. Hooten*, 131 Ala. 492, 82 So. 580; *State v. Corbett*, 61 Ark. 226, 32 S. W. 686; *Rice v. Colorado Smelting Co.*, 28 Colo. 512, 66 Pac. 894; *Jacksonville, T. & K. W. Ry. Co. v. Adams*, 33 Fla. 603, 15 So. 257, 24 L. R. A. 272; *Legler v. Board of Com'rs*, 147 Ind. 181, 45 N. E. 604; *Sudbury v. Board of Com'rs*, 157 Ind. 446, 63 N. E. 45; *Ferry v. Campbell*, 110 Iowa, 290, 81 N. W. 604, 50 L. R. A. 92; *Lynch v. Murphy*, 119 Mo. 163, 24 S. W. 774; *Smith v. Howell*, 60 N. J. L. 384, 38 Atl. 180; *Allison v. Crocker*, 67 N. J. L. 596, 52 Atl. 362; *State v. Cincinnati*, 52 Ohio St. 419, 40 N. E. 508; *Kansas City v. Stegmiller*, 151 Mo. 189, 52 S. W. 723; *English & Scottish Am. Mtg. Co. v. Hardy*, 93 Tex. 289, 55 S. W. 169. Compare *Copeland v. Sheridan*, 152 Ind. 107, 51 N. E. 474.

law-making department in enacting laws, we are not advised. The rule for the guidance of courts is to ascertain the intention of the legislature, and not the mistakes of the legislature, either of law or fact. Now, the manifest intention of the legislature was to change the law as it appeared on the statute books by simply making prize fighting a misdemeanor instead of a felony, and to change the punishment for a violation of the law accordingly. The amendment, which in fact is a substitution for the original second section and not an amendment properly speaking, was properly passed, with all proper reference to the whole act as matter of identification. . . . Any act which manifests a design that any particular provision shall be the law is a sufficient enactment. And when the legislature has power to enact a law and its intention is manifest, effect will be given to the intention rather than to a mere failure of its language to express or describe what was intended." ²⁰

²⁰ State v. Corbett, 61 Ark. 226, 240, 241, 82 S. W. 686. The question received very careful consideration at the hands of the New Jersey court of errors and appeals, which says: "But I am prepared to go further and hold that an unconstitutional statute is nevertheless a statute—that is, a legislative act. Such a statute is commonly spoken of as void. I should prefer to call it unenforcible because in conflict with a paramount law. If properly to be called void, it is only so with reference to claims based upon it. Neither of the three great departments to which the constitution has committed government by the people can encroach upon the domain of the other. The function of the judicial department, with respect to legislation deemed unconstitutional, is not exercised

in rem, but always *in personam*. The supreme court cannot set aside a statute as it can a municipal ordinance. It simply ignores statutes deemed unconstitutional. For many purposes an unconstitutional statute may influence judicial judgment; where, for example, under color of it, private or public action has been taken. An unconstitutional statute is not merely blank paper. The solemn act of the legislature is a fact to be reckoned with. Nowhere has power been vested to expunge it from its proper place among statutes. . . . The claim is that under the provision as to amendment, where a statute is wholly unconstitutional, an amendment of the section or sections that make it so leaves the other sections unaffected unless inserted at length in the new stat-

§ 234. Effect of second amendment of section which ignores prior amendment.— Where a section was amended by adding or inserting certain words or provisions and re-enacted as amended, and the same section was again amended in another particular, not inconsistent with the first, and re-enacted, omitting the words inserted by the first amendment and entirely ignoring that amendment, it was held that the first amendment was not repealed and the words inserted remained in force as part of the section.²¹ So where a section was amended by striking out certain words, and was again amended in another particular by striking out and inserting words “so as to read as follows,” and was re-enacted with the words stricken out by the first amendment, it was held that the inclusion of these words was an inadvertence or mistake and the words were disregarded.²² Section 1455 of the code of Georgia provided that elections on the fence question should be held at such time as the ordinary might appoint. In 1883 this section was amended so as to require such elections to be held on

ute, and that they should be considered as if never enacted, so that the new legislation is incomplete and ineffectual. This is a strained and unnatural construction of the provision. To me it seems very plain that the two enactments are to be read together, and if, when so read, a constitutional enactment appears, the courts must give it effect. . . . A view opposite to that now taken would lead to much confusion. Many statutes are of doubtful constitutionality. To require that the removal of such a doubt should, at the peril of those interested, require an entirely new enactment, involving an express or implied repeal of the doubtful legislation, would be most unreasonable. . . . After

careful consideration of the subject I have reached the conclusion that a statute so framed as to be wholly or in part unconstitutional, but having a title expressing a constitutional object, may, by amendatory legislation, be rendered constitutional without having recourse to an enactment independent throughout its provisions.” *Allison v. Crocker*, 67 N. J., L. 598, 600-603, 52 Atl. 362.

²¹ *Lewis v. Brandenburg*, 105 Ky. 14, 47 S. W. 862; *Lang v. Calloway*, 68 Mo. App. 393; *Parlin Orendorf Co. v. Hord*, 78 Mo. App. 279.

²² *Svennes v. West Salem*, 114 Wis. 650, 91 N. W. 121. See also *Custin v. Viroqua*, 67 Wis. 814, 80 N. W. 515.

the first Wednesday in July following the filing of the petition. In 1889 the same section was again amended, the latter act declaring that the section should be amended by inserting certain provisions as to the qualifications of voters at such elections, and that as a result of such amendment the section would read "as follows," and re-enacted the old section as to the time of elections. It was held that the amendment of 1883 was not repealed, but remained in force and continued to prescribe the time of election.³³ But it is a question of intent, and in some cases the intermediate act is held to be repealed.³⁴

§ 235. When section subdivided into clauses or paragraphs.— In Indiana it has been held that if the section is subdivided into clauses or paragraphs, and an amendment is made affecting one only of the clauses or paragraphs, the entire section must nevertheless be included in the amendatory statute; it must be reconstructed entire as it is intended in the future to operate.³⁵ But in other states it has been held that where a section is divided into numbered clauses or paragraphs, each such clause or paragraph may be treated as a section for purposes of amendment; that is, that it will be sufficient to set forth the particular clause or paragraph amended without setting out all the clauses or paragraphs of the section.³⁶

§ 236. Discrepancy between amendment specified and section as amended.— It is not necessary that an amendatory statute should specify the amendment to be made and

³³ *Reeves v. Gay*, 92 Ga. 309, 18 S. E. 61. To same effect, *State v. Black*, 34 S. C. 194, 13 S. E. 361; *Horn v. State*, 114 Ga. 509, 40 S. E. 768.

³⁴ *Columbia Wire Co. v. Boyce*, 104 Fed. 172, 44 C. C. A. 588; *Heinze v. Butte, etc. Min. Co.*, 107 Fed. 165, 46 C. C. A. 219; *McDermott v. Nassau Electric R. R. Co.*, 85 Hun, 423, 32 N. Y. S. 884. See *post*, § 273.

³⁵ *Town of Martinsville v. Frieze*, 33 Ind. 507.

³⁶ *State v. Kearney*, 49 Neb. 325, 387, 68 N. W. 533, 70 N. W. 255; *State v. Frank*, 61 Neb. 679, 85 N. W. 956; *Nobles v. State*, 38 Tex. Crim. App. 330, 42 S. W. 978. To same effect, *Beatrice v. Masslich*, 108 Fed. 743, 47 C. C. A. 657.

also set out the section as amended. But this is frequently done. If there is a discrepancy between the recital of the proposed amendment and the amendment as it appears in the section as set forth at length and complete, the latter controls.¹⁷ It is not only the latest expression of the legislative intent, but the essential part of the amendatory act under the constitution. "This view," says the supreme court of Minnesota in the case cited, "would seem to give best expression to the real intent of the legislature, who were more likely to have assented to the paragraph which is extended according to its tenor than to the introductory clause." But where both the title and body of an act indicated that a certain amendment was to be made, but the section set forth as amended omitted certain words of the indicated amendment which made a material change in the amendment as indicated by both the title and body of the act, it was held that the omission was a clerical mistake and the act was read as if the words were in.¹⁸ And in Wisconsin, whose constitution does not contain the provision in question, it is held that, where an amendatory act provides that a section be amended in a specified manner so that the section when amended shall read "as follows," and the amendment as contained in the section set forth differs from the amendment previously specified, the latter will control.¹⁹

§ 237 (133). **Effect of amendment "so as to read as follows."**—The constitutional provision requiring amendments to be made by setting out the whole section as amended was not intended to make any different rule as to the effect of such amendments. So far as the section is changed it must receive a new operation, but so far as it is

¹⁷ *Gilbert v. Georgia R. R. & E. Co.*, 104 Ga. 412, 30 S. E. 673; *Hart v. State*, 113 Ga. 939, 39 S. E. 321; *Howard v. Bangor & A. R. R. Co.*, 86 Me. 387, 29 Atl. 1101; *Loper v. State*, 82 Minn. 71, 84 N. W. 650; *Scott v. Mo. Pac. Ry. Co.*, 38 Mo. App. 523.

¹⁸ *Abernathy v. Michell*, 113 Ga. 127, 38 S. E. 303; *Ball v. Mapp*, 114 Ga. 349, 40 S. E. 272.

¹⁹ *Custin v. Viroqua*, 67 Wis. 314, 30 N. W. 515; *State v. Stillman*, 81 Wis. 124, 51 N. W. 260; *Svennes v. West Salem*, 114 Wis. 650, 91 N. W. 121.

not changed it would be dangerous to hold that the mere nominal re-enactment should have the effect of disturbing the whole body of statutes *in pari materia* which had been passed since the first enactment.⁴⁰ There must be something in the nature of the new legislation to show such an intent with reasonable clearness before an implied repeal can be recognized.⁴¹ "By observing the constitutional form of amending a section of a statute," says the court in one case, "the legislature does not express an intention then to enact the whole section as amended, but only an intention then to enact the change which is indicated. Any other rule of construction would surely introduce unexpected results and work great inconvenience."⁴²

The amendment operates to repeal all of the section amended not embraced in the amended form.⁴³ The por-

⁴⁰ *Small v. Lutz*, 41 Ore. 570, 67 Pac. 421, 69 Pac. 825.

⁴¹ *Hellman v. Shoulters*, 114 Cal. 136, 45 Pac. 1068; *Gordon v. People*, 44 Mich. 485, 7 N. W. 69; *Ely v. Holton*, 15 N. Y. 595; *Moore v. Mausert*, 49 id. 332; *People v. Supervisors*, 67 N. Y. 109, 23 Am. St. Rep. 94; *Burwell v. Tullis*, 12 Minn. 572; *Alexander v. State*, 9 Ind. 337; *Longlois v. Longlois*, 48 id. 60-64; *Benton v. Wickwire*, 54 N. Y. 226; *The Borrowdale*, 89 Fed. 376. See *Powers v. Shepard*, 48 N. Y. 540.

⁴² *State v. Newark*, 57 N. J. L. 298, 301, 30 Atl. 543.

⁴³ *Medical College v. Muldon*, 46 Ala. 603; *Ratcliff v. People*, 22 Colo. 75, 43 Pac. 553; *Basnett v. Jacksonville*, 19 Fla. 664; *State v. Routh*, 61 Minn. 205, 63 N. W. 621; *Rundlett v. St. Paul*, 64 Minn. 223, 66 N. W. 967; *Shadewald v. Phillips*, 72 Minn. 520, 75 N. W. 717; *Helena v. Rogan*, 27 Mont. 185, 69 Pac. 709;

Nash v. White's Bank, 37 Hun, 57; *Guaranty Trust Co. v. Troy Steel Co.*, 33 Misc. 484, 68 N. Y. S. 915; *Fargo v. Ross*, 11 N. D. 369, 92 N. W. 449; *Reid v. Smoulter*, 128 Pa. St. 324, 18 Atl. 445; *Sener v. Ephrata*, 176 Pa. St. 80, 34 Atl. 954; *Somers v. Commonwealth*, 97 Va. 759, 33 S. E. 384; *Bierer v. Blurok*, 9 Wash. 63, 36 Pac. 975; *Nudgett v. Liebes*, 14 Wash. 482, 45 Pac. 19; *Ashland Water Co. v. Ashland County*, 87 Wis. 209, 58 N. W. 235. Amendatory acts should not receive a forced construction to make them repealing statutes. *Lucas County v. Chicago, Burlington & Q. Ry. Co.*, 67 Iowa, 541, 25 N. W. 769. In *Bank of Metropolis v. Faber*, 150 N. Y. 200, 44 N. E. 779, the court, after referring to the general rule that when a section is amended "so as to read as follows" the section amended is repealed, says: "That rule is not so absolute and unqualified as not to be made

tions of the amended sections which are merely copied without change are not to be considered as repealed and again enacted, but to have been the law all along; and the new parts or the changed portions are not to be taken to have been the law at any time prior to the passage of the amended act. The change takes effect prospectively according to the general rule.⁴⁴ But all the provisions of the prior law amended which continue in force after the passage of the amendatory act derive their force thereafter not from the original but the amendatory act, and as to the future the old act or section is repealed *in toto*.⁴⁵ A repeal of that act would not revive the provisions as originally enacted.⁴⁶ On the contrary, a repeal of the amendatory act

to yield to a contrary intention when it is to be found in the nature of the case, in the language employed and in the course of contemporaneous legislation on the subject." p. 207.

⁴⁴ *Ely v. Holton*, 15 N. Y. 595; *Moore v. Mausert*, 49 id. 332; *Nash v. White's Bank*, 37 Hun, 57; *Syracuse Savings Bank v. Town of Seneca Falls*, 88 N. Y. 317; *Goillotel v. Mayor, etc.*, 87 N. Y. 441; *Calhoun v. Delhi, etc. R. R. Co.*, 28 Hun, 379; *Kerlinger v. Barnes*, 14 Minn. 526; *New York, etc. R. R. Co. v. Van Horn*, 57 N. Y. 473, 477; *Murray v. Gibson*, 15 How. 421, 14 L. Ed. 755; *Gamble v. Beattie*, 4 How. Pr. 41; *Benton v. Wickwire*, 54 N. Y. 226; *Matter of Peugnet*, 87 N. Y. 444; *McEwen v. Dan, Lessee*, 24 How. 242, 16 L. Ed. 673; *Walker v. State*, 7 Tex. App. 245; *Goodno v. Oshkosh*, 31 Wis. 137; *State v. Ingersoll*, 17 id. 631; *Mann v. McAtee*, 37 Cal. 11; *Kelsey v. Kendall*, 48 Vt. 24; *Bay v. Gage*, 36 Barb. 447; *Bratton v. Guy*, 12 S. C. 42; *McGeehan v. Burke*, 87 La. Ann. 156; *State v. Brewster*, 3 Am.

& Eng. Corp. Cas. 551; *Kamerick v. Castleman*, 21 Mo. App. 587; *State v. Andrews*, 20 Tex. 230; *McMullen v. Guest*, 6 Tex. 275; *State v. Baldwin*, 45 Conn. 184; *Alexander v. State*, 9 Ind. 887; *Cordell v. State*, 23 id. 1; *Martindale v. Martindale*, 10 id. 566; *Fullerton v. Spring*, 3 Wis. 667; *Stingle v. Nevel*, 9 Ora. 62; *Laude v. Chicago, etc. Ry. Co.*, 33 Wis. 640; *Glentz v. State*, 38 id. 549; *Powers v. Shepard*, 48 N. Y. 540; *United Hebrew B. Ass'n v. Benshimol*, 180 Mass. 325; *Morrisse v. Royal British Bank*, 1 C. B. (N. S.) 67; *Middleton v. New Jersey, etc. Co.*, 26 N. J. Eq. 269.

⁴⁵ *Huffman v. Hall*, 102 Cal. 26, 36 Pac. 417; *Palmer v. Danville*, 166 Ill. 42, 46 N. E. 620; *People v. Hiller*, 113 Mich. 209, 71 N. W. 630; *State v. Reads*, 76 Minn. 69, 78 N. W. 868; *Book v. New York*, 31 Misc. 54, 64 N. Y. S. 545; *Fowler v. Columbia Co.*, 18 Pa. Co. Ct. 653; *Cole Mfg. Co. v. Falls*, 92 Tenn. 607, 23 S. W. 856.

⁴⁶ *State v. Burk*, 68 Iowa, 661, 56 N. W. 180; *Goodno v. Oshkosh*, 31

would be a repeal of the provisions therein continued in force from the original act.⁴⁷

The word "hereafter" used in the statute as amended must be construed distributively. As to cases within the statute as originally enacted, it means subsequent to the passage of the original act; as to cases brought within the statute by the amendment, it means subsequent to the time of the amendment.⁴⁸ It is a general rule, however, that an amended statute is construed, as regards any action had after the amendment was made, as if the statute had been originally enacted in the amended form.⁴⁹ "The effect of an amendment of a section of the law is not to sever it from its relation to other sections of the law, but to give it operation in its new form as if it had been so drawn originally, treating the whole act as a harmonious entirety, with its several sections and parts mutually acting upon each other."⁵⁰ Where a proviso is added to a section by amendment it will be strictly construed and will be applied only to that section, unless a contrary intent is clear.⁵¹

Wis. 127; *People v. Supervisors*, 67 N. Y. 109; *People v. Wilmerding*, 136 N. Y. 363, 32 N. E. 1099.

⁴⁷ *Moody v. Seaman*, 46 Mich. 74, 8 N. W. 711.

⁴⁸ *Matter of Peugnet*, 67 N. Y. 444; *Barrons v. People's Gas Light & Coke Co.*, 75 Fed. 794.

⁴⁹ *Holbrook v. Nichol*, 36 Ill. 161; *Turney v. Wilton*, id. 385; *Conrad v. Nall*, 24 Mich. 275; *Kamerick v. Castleman*, 21 Mo. App. 587; *Queen v. St. Giles*, 3 E. & E. 224; *Ashley v. Harrington*, 1 D. Chip. 348; *Harrell v. Harrell*, 8 Fla. 46; *Nations v. State*, 64 Ark. 467, 43 S. W. 396; *Walsh v. State*, 142 Ind. 357, 41 N. E. 65, 33 L. R. A. 392; *Meer v. Board of Com'rs*, 26 Ind. App. 85, 59 N. E. 184; *State v. Hirzel*, 137 Mo. 435, 37 S. W. 921, 38 S. W. 961; *Epperson v. New York Life Ins. Co.*, 90 Mo. App. 432; *Cass County*

v. Sarpy County, 63 Neb. 813, 89 N. W. 291; *Lyon v. Manhattan Ry. Co.*, 142 N. Y. 298, 37 N. E. 113, 25 L. R. A. 402; *Morgan v. Hedstrom*, 164 N. Y. 224, 58 N. E. 26; *State v. Cincinnati*, 52 Ohio St. 419, 40 N. E. 508; *United States v. Sapinkow*, 90 Fed. 654; *Fitzgerald v. Kewis*, 164 Mass. 495, 41 N. E. 687; *Hatch v. Calhoun Circuit Judge*, 127 Mich. 174, 86 N. W. 518; *Drew v. Tiffit*, 79 Minn. 175, 81 N. W. 839, 79 Am. St. Rep. 446, 47 L. R. A. 525; *Farrell v. State*, 54 N. J. L. 421, 24 Atl. 725; *Turner v. Davenport*, 61 N. J. Eq. 18, 47 Atl. 766; *Miller v. McKeon*, 15 App. Div. 133, 44 N. Y. S. 371. See *Mortimer v. Chambers*, 63 Hun, 385, 17 N. Y. S. 874.

⁵⁰ *Farrell v. State*, 54 N. J. L. 421, 24 Atl. 725.

⁵¹ *De Graff v. Went*, 164 Ill. 485, 43 N. E. 1075.

§ 238 (134). **Repeal and re-enactment—Construction and effect.**—Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time.⁵² The intention manifested is the same as in an amendment enacted in the form noticed in the preceding section. Offices are not lost;⁵³ corporate existence is not ended;⁵⁴ inchoate statutory rights are not defeated;⁵⁵ a statutory power is not taken away,⁵⁶ nor pending proceedings⁵⁷ or criminal charges affected⁵⁸ by such repeal and re-enactment of the law on which they respectively depend. This rule was applied in *Walker v. State*,⁵⁹ though after a conviction for murder and a sentence of death pronounced, and, pending an appeal therefrom, the revised penal code took effect and changed the previous penalty for the offense from “death” to “death

⁵² *Fullerton v. Spring*, 3 Wis. 667; *Laude v. Chicago, etc. R. R. Co.*, 33 id. 640; *Scheftels v. Tabert*, 46 id. 439; *Middleton v. N. J. & C. Ry. Co.*, 26 N. J. Eq. 269; *Glentz v. State*, 38 Wis. 549; *Moore v. Kenockee*, 75 Mich. 832, 42 N. W. 944, 4 L. R. A. 555; *Junction City v. Webb*, 44 Kan. 71, 23 Pac. 1073; *Swamp Land District v. Glide*, 112 Cal. 85, 44 Pac. 451; *Santa Cruz Rock Pavement Co. v. Lyons*, 133 Cal. 114, 65 Pac. 329; *Callahan v. Jennings*, 16 Colo. 471, 27 Pac. 1055; *People v. Board of Equalization*, 20 Colo. 220, 37 Pac. 964; *Hancock v. District Tp.*, 78 Iowa, 550, 48 Pac. 527; *Butte & Boston Con. Min. Co. v. Mont. Ore Purchasing Co.*, 24 Mont. 125, 60 Pac. 1039; *State v. Bemis*, 45 Neb. 724, 64 N. W. 348; *Matter of Prine's Estate*, 136 N. Y. 347, 32 N. E. 1091, 18 L. R. A. 718; *Baines v. Janesville*, 100 Wis. 869, 75 N. W. 404;

State Trust Co. v. Kansas City, etc. R. R. Co., 115 Fed. 363; *Fisher v. Simon*, 95 Tex. 284, 66 S. W. 447; *State v. Mason*, 153 Mo. 23, 54 S. W. 524; *Julien v. Model B. L. & I. Ass'n*, 116 Wis. 79, 92 N. W. 561.

⁵³ *State v. Baldwin*, 45 Conn. 134.

⁵⁴ *United Hebrew B. Ass'n v. Ben-shimol*, 130 Mass. 325; *Wright v. Oakley*, 5 Met. 400, 406; *Steamship Co. v. Joliffe*, 2 Wall. 450, 17 L. Ed. 805.

⁵⁵ *Caperon v. Strout*, 11 Nev. 304; *Skyrme v. Occidental, etc. Co.*, 8 id. 219; *Moore v. Kenockee*, 75 Mich. 832.

⁵⁶ *Middleton v. New Jersey, etc. Co.*, 26 N. J. Eq. 269.

⁵⁷ *Dennison v. Allen*, 106 Mich. 295, 64 N. W. 38.

⁵⁸ *State v. Gumber*, 87 Wis. 298; *State v. Wish*, 15 Neb. 448, 19 N. W. 686.

⁵⁹ 7 Tex. App. 245.

or confinement in the penitentiary for life." If a greater penalty is imposed for an offense defined in the re-enacted law, the previous law is deemed repealed; and after such repeal takes effect there can be no punishment inflicted for any offense committed contrary to its provisions while they were in force.⁶⁰ A repeal is not rendered inoperative by a re-enactment where they are not simultaneous, where there is an interval of time after the repeal takes effect before the re-enactment goes into operation;⁶¹ or where, instead of the old law ceasing to operate by repeal, it has served its purpose—is exhausted and spent before the re-enactment.⁶² Where in a revision the sections of an act are separated but re-enacted, they are to be construed the same as when part of one act.⁶³

§ 239 (135). Amendments by implication not within the constitutional requirement — Acts complete in themselves.— Where an act does not purport to be amendatory, but is enacted as original and independent legislation, and is complete in itself, it is not within the constitutional requirement as to amendments, though it may, by implication, modify or repeal prior acts or parts thereof.⁶⁴ "The

⁶⁰ *State v. Van Stralen*, 45 Wis. 437; *State v. Campbell*, 44 id. 529.

⁶¹ *Kane v. New York, etc. Ry. Co.*, 40 Conn. 139.

⁶² *Emporia v. Norton*, 16 Kan. 286.

⁶³ *Tise v. Shaw*, 68 Md. 1, 11 Atl. 363.

⁶⁴ *Ex parte Pollard*, 40 Ala. 77; *Tuskaloosa Bridge Co. v. Olmstead*, 41 Ala. 9; *Falconer v. Robinson*, 46 Ala. 340; *Ware v. St. Louis, etc. Co.*, 47 Ala. 667; *Lockhart v. Troy*, 48 Ala. 579; *State v. Rogers*, 107 Ala. 444, 19 So. 909; *Ex parte Thomas*, 118 Ala. 1, 21 So. 369; *Scales v. State*, 47 Ark. 476, 1 S. W. 769, 58 Am. Rep. 768; *Little Rock v. Quindley*, 61 Ark. 622, 83 S. W. 1053; *St. Louis, I. M. & S. Ry. Co. v. Paul*, 64 Ark.

83, 40 S. W. 705, 62 Am. St. Rep. 154, 87 L. R. A. 504; *Nations v. State*, 64 Ark. 467, 43 S. W. 396; *Hellman v. Shoulters*, 114 Cal. 136, 45 Pac. 1068; *Denver Circle R. R. Co. v. Nestor*, 10 Colo. 403; *Lake v. State*, 18 Fla. 501; *Smith v. State*, 29 Fla. 408, 10 So. 894; *Collins v. Russell*, 107 Ga. 423, 33 S. E. 444; *Chamlee v. Davis*, 115 Ga. 266, 41 S. E. 691; *People v. Wright*, 70 Ill. 388; *Timm v. Harrison*, 109 Ill. 593; *School Directors v. School Directors*, 135 Ill. 464, 28 N. E. 49; *People v. Knopf*, 183 Ill. 410, 56 N. E. 155; *Barnham v. Lange*, 16 Ind. 497; *State v. Gerhardt*, 145 Ind. 489, 44 N. E. 469; *State v. Cross*, 38 Kan. 696, 17 Pac. 190; *Aikman v. Ed-*

constitution does not make the obviously impracticable requirement that every act shall recite all other acts that its operation may incidentally affect, either by way of repeal, modification, extension, or supply. The harmony or repugnance of acts not passed with reference to the same subject can only be effectually developed by the clash of conflicting interests in litigation, and the settlement of such questions belongs to the judicial, not the legislative department."⁶⁵

It has been held in Nebraska that if a statute is intended to be amendatory, and is clearly so, it is within this provision of the constitution, though framed as an independent act and complete in itself; that being amendatory, it should be expressly so; that the law as amended should be given

wards, 55 Kan. 751, 42 Pac. 866, 80 L. R. A. 149; Higgins v. Mitchell County, 6 Kan. App. 814, 51 Pac. 72; Purnell v. Mann, 105 Ky. 87, 48 S. W. 407; People v. Mahaney, 18 Mich. 484; Harrington v. Wanda, 28 Mich. 385; Swartwout v. Mich. Cent. R. R. Co., 24 Mich. 389; Rice v. Hosking, 105 Mich. 808, 63 N. W. 311, 55 Am. St. Rep. 448; State v. Miller, 100 Mo. 439, 13 S. W. 877; King v. Pony Gold Min. Co., 24 Mont. 470, 62 Pac. 788; State v. Trolson, 21 Nev. 419, 32 Pac. 930; Everham v. Hulit, 45 N. J. L. 58; Lehman v. McBride, 15 Ohio St. 573; Bird v. Wasco County, 3 Ore. 282; Fleischner v. Chadwick, 5 Ore. 152; State v. Rogers, 32 Ore. 348, 30 Pac. 74; Warren v. Crosby, 24 Ore. 558, 34 Pac. 661; Northern Counties Trust v. Sears, 30 Ore. 388, 41 Pac. 981, 85 L. R. A. 188; Smith v. Day, 39 Ore. 331, 64 Pac. 812, 65 Pac. 1065; Searights' Estate, 163 Pa. St. 210, 29 Atl. 800; Gallagher v. MacLean, 193 Pa. St. 583, 45 Atl. 76; Common-

wealth v. Holstead, 1 Pa. Co. Ct. 335; Matter of Emsworth, 5 Pa. Supr. Ct. 29; Lawrence v. Grambling, 18 S. C. 125; Home Ins. Co. v. Taxing District, 4 Lea, 644; Railroad Co. v. Crider, 91 Tenn. 489, 19 S. W. 618; Hunter v. Memphis, 93 Tenn. 571, 26 S. W. 828; State v. Yardley, 95 Tenn. 546, 32 S. W. 481, 34 L. R. A. 656; Johnson v. Martin, 75 Tex. 33, 12 S. W. 321; Snyder v. Crompton, 87 Tex. 374, 28 S. W. 1061; Clark v. Finley, 98 Tex. 171, 54 S. W. 343; Anderson v. Commonwealth, 18 Gratt. 295; In re Dietrick, 32 Wash. 471; Shields v. Bennett, 8 W. Va. 87; State v. Cain, 8 W. Va. 720; State v. Mines, 38 W. Va. 125, 18 S. E. 470; In re Koetting, 90 Wis. 168, 62 N. W. 622; In re Boulter, 5 Wyo. 329, 40 Pac. 520; Morgan v. Des Moines, 54 Fed. 456. See Central R. R. Co. v. Hamilton, 71 Ga. 461; Muscogee R. R. Co. v. Neal, 26 Ga. 121.

⁶⁵ Searights' Estate, 163 Pa. St. 210, 217, 29 Atl. 800.

in full with such reference to the old law as will clearly show for what the new law is substituted.⁶⁶ But the later cases fully establish the law of that state in harmony with the current of authority.⁶⁷ A statute which merely furnishes a rule of construction for prior statutes, and is not in terms an amendment, is not within the meaning of this constitutional regulation; it need not set forth the statutes affected.⁶⁸ Nor is a statute amendatory which repeals in general terms all acts and parts of acts which are inconsistent with its provisions.⁶⁹

An act was entitled "An act to amend an act entitled an act to more effectively secure competent and well qualified jurors in the county of Montgomery, approved February 21, 1887." The body of the act did not purport to amend, and

⁶⁶ *Smails v. White*, 4 Neb. 357; *Sovereign v. State*, 7 id. 409, 413; *In re House Roll* 284, 31 Neb. 505, 48 N. W. 275; *Stricklett v. State*, 31 Neb. 674, 48 N. W. 820; *State v. County Com'rs*, 47 Neb. 428, 66 N. W. 434.

⁶⁷ *State v. Arnold*, 31 Neb. 75, 47 N. W. 694; *Smith v. State*, 34 Neb. 689, 52 N. W. 572; *Van Horn v. State*, 46 Neb. 62, 64 N. W. 365; *Cooperrider v. State*, 46 Neb. 84, 64 N. W. 372; *State v. Moore*, 48 Neb. 870, 67 N. W. 876; *State v. Cornell*, 50 Neb. 526, 70 N. W. 56; *Henry v. Ward*, 49 Neb. 392, 68 N. W. 518; *Bryant v. Dakota County*, 58 Neb. 755, 74 N. W. 813; *Nebraska L. & B. Ass'n v. Perkins*, 61 Neb. 254, 85 N. W. 67. In *State v. Moore*, 48 Neb. 870, 873, 67 N. W. 876, the court says: "This constitutional provision has been frequently before this court for consideration, and it is a rule well settled that where an act of the legislature is not complete in itself, but is amendatory of a former law to

which it does not refer, it is within the constitutional inhibition quoted above. In other words, the fundamental law of the state requires all the parts of an amended law to be incorporated in the act, and the old law so amended to be repealed. . . . It is also firmly established in this state by a long line of decisions that an act complete in itself is not inimical to said constitutional provision, although such act may be repugnant to, or in conflict with, a prior law which is not referred to nor in express terms repealed by the former act. In such case the earlier statute will be construed to be repealed by implication." This same language was quoted and approved in *State v. Cornell*, 50 Neb. 526, 70 N. W. 56.

⁶⁸ *State v. Geiger*, 65 Mo. 306.

⁶⁹ *Medical College v. Muldon*, 46 Ala. 608; *State v. Gaines*, 1 Lea. 734; *Matter of Emsworth Borough*, 5 Pa. Supr. Ct. 29.

proceeded as a new and independent act. It affected only one of the eighteen sections of the act of February 21. It was held that the words "to amend an act entitled an act" and "approved February 21, 1887," in the title, could be treated as surplusage, and the act was sustained as an independent act.⁷⁰

§ 240. Whether act amendatory within the constitutional provision — Illustrations.— An act of Illinois entitled "An act for the assessment of property and providing the means thereof, and to repeal a certain act therein named," provided a new mode and new machinery for the assessment of property for taxation, but left the old revenue law in force in various parts, so that it was necessary to use parts of the old law in connection with the new in order to make a complete law for the assessment of property for taxation. The new act proceeded as a new and independent act and was complete in itself, as far as it went. It was held not to be amendatory within the constitution.⁷¹ An act which is independent and complete in

⁷⁰ Thomas v. State, 124 Ala. 48, 27 So. 815. To same effect, Peed v. McCrary, 94 Ga. 487, 21 S. E. 282; Bagwell v. Lawrenceville, 94 Ga. 654, 21 S. E. 908.

⁷¹ People v. Knopf, 188 Ill. 410, 56 N. E. 155. The court says: "So far as the title goes, the act purports to be a complete law in itself and to make provision for the assessment of property throughout the state and to provide the means therefor. If it can be held to be such a law, constituting a complete and entire act of legislation on the subject which it purports to deal with, it will be deemed good and not subject to the constitutional prohibition, notwithstanding it may repeal by implication, or modify the provisions of prior

existing laws. On the other hand, if the act is merely an attempt to amend the old law for the assessment of property by intermingling new and different provisions with the old ones or by adding new provisions, so as to create out of the existing laws and this act together an act for the assessment of property, then the act is clearly amendatory of the old law, and the requirement of the constitution is that the law so amended must be inserted at length in the new act. The character of the act in this respect must be determined, not by the title alone nor the question whether the act professes to be an amendment of existing laws, but by an examination and comparison of its provisions with prior laws



itself is not within the constitution because there is a prior act covering the same subject and the purposes of the new act might have been accomplished by an amendment of the old,⁷² or because the new act is in effect a revision of the old.⁷³ An act provided that there should be exempt from execution and attachment in favor of every householder personal property to the amount of \$1,000 in addition to the property exempt under section 486 of the code. This was held to be amendatory of section 486, and, as it did not set out the section as amended, the act was held void.⁷⁴ Section 14 of the Nebraska criminal code was as follows: "If any person shall assault another with intent to commit a murder, rape or robbery upon the person so assaulted, every person so offending shall be imprisoned in the penitentiary not more than fifteen years nor less than two years." Afterwards an act was passed, independent in form, section 1 of which covered assault with intent to do great bodily injury, and section 2 of which was as follows: "If any person shall assault another with the intent to kill the person so assaulted, every person so offending shall be imprisoned in the penitentiary not less than one nor more than ten years." Section 1 was held to create a new crime and to be valid,⁷⁵ but section 2 was held to be amendatory

which are left in force. . . . These questions are, however, to be looked at in the light of the rule that an act within the legislative power is to be sustained as constitutional if it can reasonably be done, and the reason for giving the rule its utmost force in this case is especially cogent on account of conditions which are plainly apparent to everyone. Under all the circumstances the act should be sustained, if possible, as independent legislation, and not as amendatory in character. The mere fact that portions of the old law are left in force, so that the

statutes present the aspect of what has been called patch-work legislation, as they undeniably do, should not render the act void, if it can be said the act is reasonably complete and sufficient in itself upon distinct branches of the general subject." pp. 415, 416.

⁷² *State v. Rogers*, 107 Ala. 444, 19 So. 909.

⁷³ *In re Dietrick*, 82 Wash. 471.

⁷⁴ *Copland v. Pirie*, 26 Wash. 481, 67 Pac. 227, 90 Am. St. Rep. 769; *In re Buelow*, 98 Fed. 86.

⁷⁵ *Smith v. State*, 34 Neb. 689, 53 N. W. 572.

of section 14 of the criminal code and to be void, because not in compliance with the constitution as to amendments.⁷⁶ An act provided that all public high schools should thereafter be open to attendance by any person of school age residing outside the district who is a resident of the state and whose education cannot profitably be carried further in the public schools of the district of his residence. This was held to be amendatory of the prior law, which provided that all schools should be free to all children between the ages of five and twenty-one whose parents or guardians resided within the limits of the district, and, as it did not set out and re-enact the prior law, to be void.⁷⁷ An act which detached territory from one municipality and added it to another was held not to amend the charter of the former.⁷⁸ An act amendatory of the act for the incorporation of metropolitan cities provided that no policeman should be allowed fees as a witness in any case tried in any court of the state. This was held to be amendatory of the general law in regard to witness fees and to be void.⁷⁹ An act which postpones the time when another act shall take effect and makes provision for the subject-matter in the meantime was held not to be amendatory of the latter act.⁸⁰ An act which adopts the provisions of another act is not amendatory of the latter.⁸¹ So of an act which extends the operation of another act.⁸²

§ 241. Miscellaneous cases and questions in regard to amendatory acts.—Whether an amendment to a section must be germane to the subject-matter of the section

⁷⁶ *Stricklett v. State*, 81 Neb. 674, 48 N. W. 820. The following is a similar case with the same ruling: *State v. Guiney*, 55 Kan. 582, 40 Pac. 928.

⁷⁷ *Board of Education v. Moses*, 51 Neb. 288, 70 N. W. 946.

⁷⁸ *Roby v. Shepard*, 42 W. Va. 286, 28 S. E. 278.

⁷⁹ *Douglas County v. Hayes*, 53 Neb. 191, 71 N. W. 1028.

⁸⁰ *Loomis v. Runge*, 66 Fed. 856, 14 C. C. A. 148, 80 U. S. App. 138.

⁸¹ *Pacific Express Co. v. Cornell*, 59 Neb. 864, 81 N. W. 877; *Nebraska L. & B. Ass'n v. Perkins*, 61 Neb. 254, 85 N. W. 67; *Phoenix Ass. Co. v. Fire Dept.*, 117 Ala. 681, 23 So. 848, 42 L. R. A. 408.

⁸² *Bradley v. Loring*, 64 N. J. L. 227, 23 Atl. 685.

amended is a question which has been treated in a former chapter.⁸³ An act may be an amendment of another, though not so expressed.⁸⁴ An amendatory act is not void because it was introduced in the legislature before the act amended became a law.⁸⁵ Where an act of incorporation, when considered by itself, does not confer a certain power either expressly or by implication, subsequent acts assuming or implying that such power exists cannot have the effect of amending the prior act so as to confer the power.⁸⁶ An act purported to amend section 2 of chapter 112 of the acts of 1897. The amendment had no relevancy to section 2 but did to section 11. It was held to be a manifest mistake in the number of the section amended and the act was construed as an amendment of section 11.⁸⁷ An act was entitled "An act to revise the code of civil procedure of the state of California, by amending certain sections, repealing others and adding certain new sections." The act amended over four hundred sections, repealed nearly a hundred sections and added many new sections. It was held to be a revision of the code and to be void because it did not set out and re-enact the entire code as amended.⁸⁸ Where an act or

⁸³ *Ante*, § 139; and see Underwood v. McDuffee, 15 Mich. 361, 367, 93 Am. Dec. 194; Gibson v. State, 16 Fla. 291; Ex parte Cowert, 92 Ala. 94, 9 So. 225; State v. Am. Sugar Ref. Co., 106 La. 553, 81 So. 181; Trumble v. Trumble, 37 Neb. 340, 55 N. W. 869; State v. Tibbets, 52 Neb. 228, 71 N. W. 990, 66 Am. St. Rep. 492; State v. Bowen, 54 Neb. 211, 74 N. W. 615; Armstrong v. Mayer, 60 Neb. 428, 88 N. W. 401.

⁸⁴ Board of Water Com'rs v. People, 187 Ill. 660, 27 N. E. 698; English v. Danville, 150 Ill. 92, 36 N. E. 994; Cassell v. Lexington, etc. Turnpike Co., 10 Ky. L. R. 486, 9 S. W. 502, 701; State v. Robinson, 82 Ore. 43, 48 Pac. 357.

⁸⁵ Mutual Benefit Life Ins. Co. v. Winne, 20 Mont. 20, 49 Pac. 446.

⁸⁶ State v. Lincoln Trust Co., 144 Mo. 563, 46 S. W. 593. The court says: "While a statute may be repealed by implication it cannot be amended otherwise than as provided by section 34, article IV, of the state constitution, and the mere recognition of such powers did not have the effect to create them."

⁸⁷ State v. Cross, 44 W. Va. 315, 29 S. E. 527.

⁸⁸ Lewis v. Dunne, 134 Cal. 291, 66 Pac. 478, 86 Am. St. Rep. 257, 55 L. R. A. 833.

chapter is amended by adding sections thereto having certain numbers, and later the same act or chapter is amended by adding sections with the same numbers, the earlier act is not repealed or affected by the later.⁸⁰

§ 242. **Revival of law.**—The constitutional provision now under consideration usually provides that no law shall be amended or revived by reference to its title, and requires the act revived to be set out and published at length. Few cases have arisen on this branch of the provision. It has been held that a repealed act is not revived, in the constitutional sense, when its provisions are adopted by another act for the purposes of the latter act only.⁸¹

§ 243. **Constitutional provisions against adopting or extending the provisions of a law.**—The constitution of New York provides that "no act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act."⁸² There are similar constitutional provisions in other states.⁸³ A New York statute for the acquisition and improvement of lands in connection with a bridge over the Harlem river provided that the procedure to acquire title to the lands in question should be the same as was provided in another specified act. The act was held valid and not in violation of the constitutional provision quoted. As the authorities on this question are few and the case is well considered, we quote from the opinion as

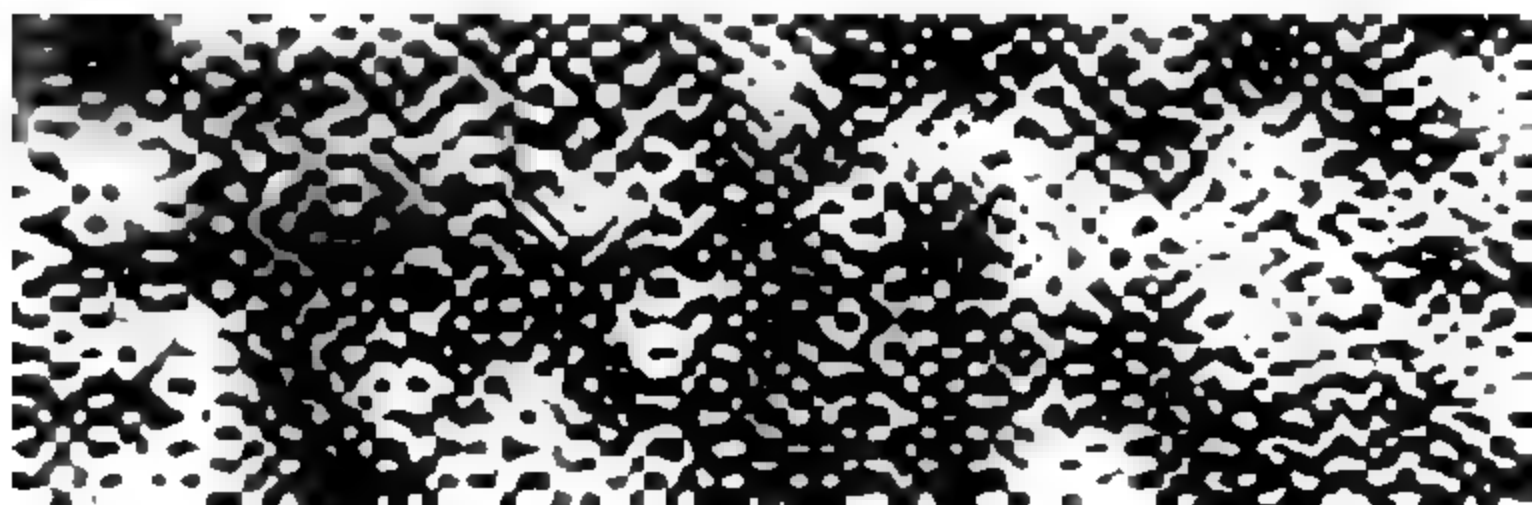
⁸⁰ *Ex parte Ruffin*, 119 Cal. 487, 51 Pac. 862; *Ex parte Williams*, 121 Cal. 328, 53 Pac. 706; *Hellman v. Shoulters*, 114 Cal. 136, 45 Pac. 1068.

⁸¹ *State v. Green*, 36 Fla. 154, 18 So. 834. And see *Stewart v. State*, 100 Ala. 1, 18 So. 948; *Miller v. Berry*, 101 Ala. 531, 14 So. 655.

⁸² Art. 3, sec. 17.

⁸³ Ala. Const. 1875, art. 4, sec. 2.

"No law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length." See also the constitutions of Arkansas, Colorado and Pennsylvania. The provision in Pennsylvania is the same as in Alabama.



follows: "A constitutional provision intended to operate as a restraint upon the legislature, with respect to the language and forms of expression to be used in framing acts of legislation, is not to be so construed as to embrace cases not fairly within its general purpose or policy, or the evils it was intended to correct, though they may be within its letter. . . . The evil in view in adopting this provision of the constitution was the incorporating into acts of the legislature, by reference to other statutes, of clauses and provisions of which the legislators might be ignorant, and which affecting public and private interests in a manner and to an extent not disclosed upon the face of the act, a bill might become a law which would not receive the sanction of the legislature if fully understood. . . . This appeal cannot be sustained without holding, in effect, that every statute, general or local, must contain within itself every detail necessary for its complete execution, and that when the lawmakers desire to adopt the procedure or some other matter of detail contained in a local statute, that cannot be done by a suitable reference, but the same must be cut out of the other statute and actually inserted in the new one *mutatis mutandis*. Such a construction of this section of the fundamental law, besides producing all the mischief already pointed out, would lead to innumerable repetitions of laws in the statute books, and render them not only bulky and cumbersome, but confused and unintelligible, almost beyond conception. . . . When a statute in itself and by its own language grants some power, confers some right, imposes some duty, or creates some burden or obligation, it is not in conflict with this constitutional provision because it refers to some other existing statute, general or local, for the purpose of pointing out the procedure, or some administrative detail, necessary for the execution of the power, the enforcement of the right, the proper performance of the duty, or the discharge of the burden or obligation."⁹³

⁹³ People v. Lorillard, 135 N. Y. See also People v. Banks, 67 N. Y. 285, 288, 289, 290, 291, 31 N. E. 1011. 575; People v. Roosevelt, 24 App.

Similar rulings have been made in other jurisdictions, and the result of all the authorities seems to be that the provision in question was intended to limit legislation which grants, modifies or destroys the rights of parties, but to have no application to acts which simply adopt or make applicable the provisions of other acts relating to remedies or methods of procedure.⁹⁴ The supreme court of Pennsylvania says: "When there is an established system of procedure in certain cases, whether it be by common law or statute or joint operation of both, a new act applying such procedure to a new class of cases by general reference to it is not a violation of section 6, article 3, although it may operate to some extent as an extension of a previous statute."⁹⁵ An act which provides that one locality shall be governed, in respect to stock running at large, by the provisions of a law enacted for another locality, is within the provision.⁹⁶

Div. 17, 48 N. Y. S. 1043; *Matter of Buffalo Traction Co.*, 25 App. Div. 447, 49 N. Y. S. 1052; *Choate v. Buffalo*, 89 App. Div. 879, 57 N. Y. S. 383; *People v. Davis*, 78 App. Div. 570, 79 N. Y. S. 803.

⁹⁴ *Childs v. State*, 97 Ala. 49, 12 So. 441; *Birmingham Union Ry. Co. v. Elyton Land Co.*, 114 Ala. 70, 21 So. 814; *Cobb v. Vary*, 120 Ala. 263, 24 So. 442; *City Council v. Birdsong*, 126 Ala. 632, 28 So. 532; *Watkins v. Eureka Springs*, 49 Ark. 181, 4 S. W. 884; *State v. Hunter*, 69 Ark. 548, 64 S. W. 885; *Lloyd v. Smith*, 176 Pa. St. 218, 35 Atl. 199; *Knisely v. Cotterel*, 196 Pa. St. 614, 46 Atl. 861, 50 L. R. A. 86; *Greenfield Ave.*, 191 Pa. St. 290, 43 Atl. 290; *James Smith Woolen Machinery Co. v. Browne*, 206 Pa. St. 543; *Krause v. Penn. R. R. Co.*, 19 Phila. 486; *Geer v. Ouray County Com'rs.*

97 Fed. 435, 38 C. C. A. 250; *St. Louis & S. F. R. R. Co. v. Southwestern Tel. & Tel. Co.*, 121 Fed. 276, 58 C. C. A. 198. Compare *Bay Shore Road Co. v. O'Donnell*, 87 Ala. 376, 6 So. 119. In the latter case the court says: "The purpose of this constitutional requirement was to have each bill considered by the general assembly, in and of itself present the full scope, operation and effect of the proposed law, so that members might know and intelligently consider the details of every measure, and vote neither aye or nay in 'blind ignorance of its provisions, or even in trusting confidence to the representations of others.'"

⁹⁵ *James Smith Woolen Machinery Co. v. Browne*, 206 Pa. St. 543.

⁹⁶ *Street v. Hooten*, 181 Ala. 492, 32 So. 580.

CHAPTER VIII.

REPEALS AND REPEALING ACTS.

§ 244 (136). Duration of statutes and power of repeal. Statutes are perpetual when no time is stated.¹ A temporary statute operates until its time expires.² The operation of statutes may be suspended; then they will come into operation when the period of suspension expires.³ A temporary statute made perpetual before its expiration is in effect perpetual from the beginning.⁴ Statutes have this duration subject to the continuous power of repeal. A state legislature has a plenary law-making power over all subjects, whether pertaining to persons or things, within its territorial jurisdiction, either to introduce new laws or repeal the old, unless prohibited expressly or by implication by the federal constitution or limited or restrained by its own.⁵ It cannot bind itself or its successors by enacting irrepealable laws except when so restrained. Every legislative body may modify or abolish the acts passed by itself or its predecessors.⁶ This power of repeal may be exercised

¹ *United States v. Gear*, 3 How. 120, 11 L. Ed. 523.

² *Brown v. Barry*, 3 Dall. 365.

³ A state of war between the governments of the creditor and debtor suspends the right and opportunity of a citizen of one belligerent to sue in the courts of the other, and as a consequence the statute of limitations is suspended during the existence of the war, and that time is not computed in limitation of the action. *Hanger v. Abbott*, 6 Wall. 532, 18 L. Ed. 939. The implied suspension should not con-

tinue longer than the real disability barred the institution of the action. *Braun v. Sauerwein*, 10 Wall. 218, 19 L. Ed. 895; *Heinssen v. State*, 14 Colo. 228, 23 Pac. 995; *People v. Murphy*, 202 Ill. 493, 67 N. E. 226; *State v. Sawell*, 107 Wis. 300, 83 N. W. 296.

⁴ *Dingley v. Moor*, Cro. Eliz. 750; *Rex v. Morgan*, Str. 1066; *Rex v. Swiney*, Alcock & Napier, 131.

⁵ *Musgrove v. Vicksburg, etc. R. Co.*, 50 Miss. 677.

⁶ *Bloomer v. Stolley*, 5 McLean, 158, Fed. Cas. No. 1559; *Swift v.*

at the same session at which the original act was passed;⁷ and even while a bill is in its progress and before it becomes a law.⁸ The legislature cannot bind a future legislature to a particular mode of repeal.⁹ It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes.¹⁰

§ 245. Repealing effect of an unconstitutional statute.

A repealing clause in a statute may be valid, although every other clause is unconstitutional, if such is plainly the legislative intent.¹¹ But where the repeal is intended to clear the way for the operation of the act containing the repealing clause, thereby showing an intention to displace the old law with the new, if the latter is unconstitutional the repealing clause would be dependent and inoperative.¹² "Where the evident purpose of the repeal is to displace

Newport, 7 Bush, 87; McNeil v. Commonwealth, 12 id. 727; Moore v. New Orleans, 32 La. Ann. 726; City Council v. Baptist Church, 4 Strob. 306; Files, Auditor, v. Fuller, 44 Ark. 273; Wall v. State, 23 Ind. 153; De Groot v. United States, 5 Wall. 419, 18 L. Ed. 700; Monet v. Jones, 10 Sm. & Mar. 237; Chambers v. State, 25 Tex. 307; Gilleland v. Schuyler, 9 Kan. 569. See Oleson v. Railroad Co., 86 Wis. 388; Adam v. Wright, 84 Ga. 720, 11 S. E. 893.

⁷ Spencer v. State, 5 Ind. 41, 50; Ham v. State, 7 Blackf. 314; Attorney-General v. Brown, 1 Wis. 513; In re Oregon, etc. Co., 3 Sawy. 614, Fed. Cas. No. 10,561; Rex v. Middlesex Justices, 2 B. & Ad. 818; Bourignon, etc. Ass'n v. Commonwealth, 98 Pa. St. 54; People v. Lytle, 1 Idaho, 143; Houghton Co. v. Commissioners of St. L. O., 23 Mich. 270; Brown v. Barry, 3 Dall. 365. See Manlove v. White, 8 Cal. 376.

⁸ Southwark Bank v. Commonwealth, 26 Pa. St. 446.

⁹ Kellogg v. Oshkosh, 14 Wis. 623.

¹⁰ Mongeon v. People, 55 N. Y. 613.

¹¹ Ely v. Thompson, 3 A. K. Marsh. 70; State v. Blend, 121 Ind. 514, 23 N. E. 511, 16 Am. St. Rep. 411. In the latter case the repealing clause was held void, but the court said that the legislature may use such language in a repealing clause attached to an unconstitutional statute as to leave no doubt of its intention to repeal a former law in any event. "Where, however, it is not clear that the legislature, by a repealing clause, attached to an unconstitutional act, intended to repeal the former statute upon the same subject, except upon the supposition that the new act would take the place of the former one, the repealing clause falls with the act to which it is attached."

¹² Randolph v. Builders' & Painters' Supply Co., 106 Ala. 501, 17 So.

the old law and substitute the new in its stead, the repealing section or clause, being dependent upon that purpose of substitution, necessarily falls when falls the main purpose of the act."¹³ An unconstitutional statute can have no effect to repeal former laws or parts of laws by implication, since, being void, it is not inconsistent with such former laws.¹⁴

§ 246 (137). **Modes of repeal, express or implied — Effect of disuse.**— A repeal will take effect from any subsequent statute in which the legislature gives a clear expression of its will for that purpose.¹⁵ The word "repeal" may be used

721; *People v. Fleming*, 7 Colo. 280, 8 Pac. 70; *Miller v. Edwards*, 8 Colo. 528, 9 Pac. 682; *Fesler v. Boynton*, 145 Ind. 71, 44 N. E. 37; *Stephens v. Ballou*, 27 Kan. 594; *Wells v. Hyattsville*, 77 Md. 125, 26 Atl. 357, 20 L. R. A. 89; *State v. Benzinger*, 83 Md. 481, 35 Atl. 173; *Campau v. Detroit*, 14 Mich. 276; *Westport v. McGee*, 128 Mo. 152, 30 S. W. 523; *State v. Thomas*, 138 Mo. 95, 39 S. W. 481; *Harbeck v. Mayor*, 10 Bos. 366; *People v. Dooley*, 69 App. Div. 512, 75 N. Y. S. 350; *State v. Thrall*, 59 Ohio St. 368, 52 N. E. 785; *State v. Buckley*, 60 Ohio St. 273, 54 N. E. 272; *State v. Jones*, 66 Ohio St. 453, 64 N. E. 424, 90 Am. St. Rep. 592; *State v. Beacom*, 66 Ohio St. 491, 64 N. E. 427, 90 Am. St. Rep. 599; *State v. Buckley*, 17 Ohio C. C. 86; *Matter of Roberg's Assignment*, 18 Ohio C. C. 367; *United States Mtg. & T. Co.*, 19 Ohio C. C. 358; *Collins v. Bingham Bros.*, 22 Ohio C. C. 533; *Porter v. Kingfisher County Com'rs*, 6 Okl. 550, 51 Pac. 741; *Barringer v. Florence*, 41 S. C. 501, 19 S. E. 745; *Galveston & W. Ry. Co. v. Galveston*, 96 Tex. 520, 74 S. W. 537; *Ex parte Davis*, 21 Fed. 396.

In State v. Blend, 121 Ind. 514, 23 N. E. 511, 16 Am. St. Rep. 411, the court overrules the prior case of *Meshmeier v. State*, 11 Ind. 462, which holds a contrary doctrine, and declares that the latter case is inconsistent with all the other cases on the subject, citing *Tims v. State*, 26 Ala. 165; *Sullivan v. Adams*, 3 Gray, 476; *Childs v. Shower*, 18 Iowa, 261; *Shepards v. Milwaukee, etc. R. R. Co.*, 6 Wis. 578; *State v. Burton*, 11 Wis. 50; *Devoy v. Mayor*, 35 Barb. 264; *People v. Tiphaine*, 3 Parker, 241; *Devoy v. Mayor*, 36 N. Y. 449; *State v. Hallock*, 14 Nev. 202, 33 Am. Rep. 559.

¹³ *State v. Thomas*, 138 Mo. 95, 39 S. W. 481. *Contra*: *Equitable Guaranty & Trust Co. v. Donohoe*, 3 Penn. (Del.) 191, 49 Atl. 372.

¹⁴ *McAllister v. Hamlin*, 83 Cal. 361, 28 Pac. 357; *Orange County v. Harris*, 97 Cal. 600, 32 Pac. 594; *Carr v. State*, 127 Ind. 204, 26 N. E. 778, 11 L. R. A. 370; *People v. Butler St. Foundry & I. Co.*, 201 Ill. 236, 66 N. E. 349; *Commonwealth v. Fowler*, 18 Phila. 573.

¹⁵ *State v. Judge*, 14 La. Ann. 486; *Casey v. Harned*, 5 Iowa, 1; *Leard*

in a limited sense.¹⁶ The suspension of a statute for a limited time is not a repeal¹⁷—it properly signifies the abrogation of one statute by another.¹⁸ It is *express* when declared in direct terms; *implied* when the intention to repeal is inferred from subsequent repugnant legislation. In neither form will the repeal be effected and operative until the repealing statute goes into effect.¹⁹

Laws are presumed to be passed with deliberation, and with a knowledge of all existing laws on the same subject.²⁰ If they profess to make a change, by substitution, of new for old provisions, a repeal to some extent is thus suggested, and the extent readily ascertained. Thus, amendment is frequently made by enacting that a certain section shall be so amended as "to read as follows;" then inserting the substituted provision entire without specification of the change. The parts of the former law left out are repealed. This intention is manifest.²¹ There is a negative necessarily implied that such eliminated portion shall no longer be in force. The re-enacted portions are continuations and have force

v. Leard, 80 Ind. 171. A recital in a statute that a former statute was or was not repealed is not conclusive, for it is but a legislative declaration on a judicial question. *United States v. Claflin*, 97 U. S. 546, 24 L. Ed. 1082, 1085; *Ogden v. Blackledge*, 2 Cranch, 272, 2 L. Ed. 276. Courts cannot regard a statute as repealed by non-user alone. *Pearson v. International Distillery*, 72 Iowa, 348, 34 N. W. 1.

¹⁶ *Smith v. People*, 47 N. Y. 330, 338; *Rex v. Rogers*, 10 East, 578; *Camden v. Anderson*, 6 T. R. 723; *State v. Baldwin*, 45 Conn. 184; *Robertson v. Demoss*, 23 Miss. 298, 301; *State v. County Court*, 53 Mo. 128. See *Hirschburg v. People*, 6 Colo. 145; *Warren R. R. Co. v. Belvidere*, 85 N. J. L. 584, 587.

¹⁷ *Brown v. Barry*, 8 Dall. 365.

¹⁸ *Abb. L. Dic.*, tit. Repeal; *Butte & B. Con. Min. Co. v. Mont. Ore Purchasing Co.*, 24 Mont. 125, 60 Pac. 1039.

¹⁹ *Spaulding v. Alford*, 1 Pick. 33.

²⁰ *Bowen v. Lease*, 5 Hill, 221, 226; *Landis v. Landis*, 39 N. J. L. 274, 277.

²¹ *Moore v. Mausert*, 49 N. Y. 332; *People v. Supervisors*, 67 id. 109, 28 Am. Rep. 94; *McRoberts v. Washburne*, 10 Minn. 28; *State v. Andrews*, 20 Tex. 230; *Gossler v. Goodrich*, 8 Cliff. 71, Fed. Cas. No. 5631; *State v. Ingersoll*, 17 Wis. 681; *Goodno v. Oshkosh*, 31 Wis. 127; *Breitung v. Lindauer*, 37 Mich. 217; *Longlois v. Longlois*, 48 Ind. 60; *Mosby v. Ins. Co.*, 31 Gratt. 629; *State v. Wish*, 15 Neb. 448, 19 N. W. 686; *ante*, § 237. See *Hirschburg v. People*, 6 Colo. 145.

from their original enactment.²² Where a statute repeals all former laws within its purview, the intention is obvious and is readily recognized to sweep away all existing laws upon the subjects with which the repealing act deals.²³

The purview is the enacting part of a statute, in contradistinction to the preamble; and a repeal of all acts within the purview of the repealing statute should be understood as including all acts or parts of acts in relation to all cases which are provided for by the repealing act, and no more.²⁴ But a statute may have the effect to repeal a former statute or some provision of it though it be silent on the subject of repeal. In such cases repeal is inferred from necessity, if there be such conflict that the old and new statutes cannot stand together.²⁵ Repugnancy in principle merely, between two acts, forms no reason why both may not stand.²⁶ Nor is one statute repealed by the repugnant spirit of another;²⁷ nor for conflict with an unconstitutional provision.²⁸

It has been held that one private act will not repeal another by implication.²⁹ It has been held that a statute may become repealed by adverse custom or long non-user.³⁰ As

²² *Ely v. Holton*, 15 N. Y. 595; *Goodno v. Oshkosh*, 81 Wis. 127; *ante*, §§ 237, 238. The court says in the last case cited: "The original section, as an independent and distinct statutory enactment, ceased to have any existence the very moment the amendatory act was passed and went into effect, and whatever provisions of it remained as law were such solely by virtue of being again enacted in the amendment. The original section, as a separate statute, was as effectually repealed and obliterated from the statute book as if the repeal had been made in direct and express words and none of its provisions had been re-enacted."

²³ *Ogden v. Witherspoon*, 2 Hay-

wood, 404; *Harrington v. Rochester*, 10 Wend. 547.

²⁴ *Payne v. Conner*, 3 Bibb, 180; *Commonwealth v. Watts*, 84 Ky. 537, 2 S. W. 123; *Patterson v. Caldwell*, 1 Met. (Ky.) 489; *Grigsby v. Barr*, 14 Bush, 830. See *Gorham v. Lockett*, 6 B. Mon. 146.

²⁵ See next section.

²⁶ *Smith, Ex parte*, 40 Cal. 419.

²⁷ *State v. Macon Co. Ct.*, 41 Mo. 453, 454. See *Cass v. Dillon*, 2 Ohio St. 612; *State v. Cincinnati*, 19 Ohio. 197.

²⁸ *Ante*, § 245.

²⁹ *Trustees v. Laird*, 4 De G., M. & G. 732. See *Schneider v. Staples*, 66 Wis. 167, 28 N. W. 145.

³⁰ *Hill v. Smith, Morris*, 70; *O'Hanlon v. Myers*, 10 Rich. L. 128; *Wat-*

repeal can only proceed from the legislature, the obsolescence of the non-used statute must be in some way recognized in subsequent legislation. Popular disregard of a statute, or custom opposed to it, will not repeal it.²¹ A statute does not cease on removal of some of the evils it was intended to provide against.²² Long practice may clear away ambiguities, and have a potent influence in the interpretation of a statute.²³ So a long disuse of a statute of a penal nature, implying that it has not been kept in popular remembrance, or an intention of the government not to enforce it, may incline a court to soften its rigors within the limits of judicial discretion. Parts of a statute may become useless and incapable of any operation on account of the repeal or radical change of other and fundamental parts. They should be deemed repealed, because lifeless fragments.²⁴

§ 247 (138). **Repeals by implication**—General rules—**Same not favored.**—Such repeals are recognized as intended by the legislature, and its intention to repeal is ascertained as the legislative intent is ascertained in other respects, when not expressly declared, by construction.²⁵ An implied repeal results from some enactment the terms and necessary operation of which cannot be harmonized with the terms and necessary effect of an earlier act. In such case the later law prevails as the last expression of the legislative will; therefore, the former law is constructively repealed, since it cannot be supposed that the law-making

son v. Blaylock, 2 Mills (S. C.), 851; Cas. (D. C.) 210; State v. Meek, 26 Canady v. George, 6 Rich. Eq. 108. Wash. 405, 67 Pac. 76.

²¹ Kitchen v. Smith, 101 Pa. St. 452; Homer v. Commonwealth, 106 104. ²² Mayor, etc. v. Dearmon, 2 Sneed,

id. 221, 51 Am. Rep. 521; James v. Commonwealth, 12 S. & R. 220; ²³ Leigh v. Kent, 3 T. R. 362. See post, § 478.

White v. Boot, 3 T. R. 274; Leigh v. Kent, 3 id. 362; Tyson v. Thomas, McC. & Y. 127; Rex v. Wells, 4 478, 490, 21 L. Ed. 769. ²⁴ Stephens v. Ballou, 27 Kan. 594; Steamboat Co. v. Collector, 18 Wall.

Dowl. 562; The India, 38 L. J. Rep. P. M. & A. 198; S. C., Br. & L. 221; ²⁵ State v. McCardy, 62 Minn. 509, 64 N. W. 1183; Thorpe v. Schooling, Hebbert v. Purohas, L. R. 3 P. C. 7 Nev. 15.

650; Costello v. Palmer, 20 App.

power intends to enact or continue in force laws which are contradictions. The repugnancy being ascertained, the later act or provision in date or position has full force, and displaces by repeal whatever in the precedent law is inconsistent with it.³⁵

³⁵ *Kinney v. Mallory*, 3 Ala. 626; *Barker v. Bell*, 46 Ala. 216; *Smith v. Speed*, 50 Ala. 276; *Iverson v. State*, 52 Ala. 170; *Parker v. Hubbard*, 64 Ala. 203; *Riggs v. Brewer*, 64 Ala. 282; *Watson v. Kent*, 78 Ala. 602; *Ex parte Thomas*, 113 Ala. 1, 21 So. 369; *State v. Watts*, 23 Ark. 304; *Ex parte Osborn*, 24 Ark. 479; *Coats v. Hill*, 41 Ark. 149; *People v. Griffen*, 20 Cal. 677; *People v. San Francisco, etc. R. R. Co.*, 28 Cal. 254; *People v. Burt*, 43 Cal. 560; *Pennie v. Reis*, 80 Cal. 266, 22 Pac. 176; *Davis v. Whidden*, 117 Cal. 618, 49 Pac. 766; *Hirschburg v. People*, 6 Colo. 145; *Eaton v. People*, 30 Colo. 345, 70 Pac. 426; *People v. Wright*, 30 Colo. 439, 71 Pac. 365; *Husbands v. Talley*, 3 Penn. (Del.) 88, 47 Atl. 1009; *Harri-son v. Walker*, 1 Ga. 32; *Elrod v. Gilliland*, 27 Ga. 467; *Western & A. R. R. Co. v. Atlanta*, 113 Ga. 537, 38 S. E. 996, 54 L. R. A. 294; *Sulli-van v. People*, 15 Ill. 233; *Fowler v. Perkins*, 77 Ill. 371; *Pavey v. Utter*, 182 Ill. 489, 24 N. E. 77; *Commis-sioners of Highways v. Deboe*, 43 Ill. App. 25; *Spring Valley v. Spring Valley Coal Co.*, 71 Ill. App. 432; *Lewis v. Cook County*, 72 Ill. App. 151; *Hamlyn v. Nesbit*, 87 Ind. 284; *Hyland v. Brazil Block Coal Co.*, 128 Ind. 335, 26 N. E. 672; *Central Iowa R. R. Co. v. Board of Sup'rs*, 67 Iowa, 199, 25 N. W. 128; *Straight v. Crawford*, 73 Iowa, 676, 35 N. W. 920; *Ely v. Thompson*, 3 A. K. Marsh. 70; *Maddox v. Graham*, 2 Met. (Ky.) 56, 76; *Saul v. His Cred-itors*, 5 Martin (N. S.), 569, 16 Am. Dec. 212; *Gayle's Heirs v. Will-iams*, 7 La. 162; *Collins v. Chase*, 71 Me. 434; *Dugan v. Gittings*, 3 Gill. 138; *Appeal Tax Court v. Western Md. R. R. Co.*, 50 Md. 275; *State v. Yewell*, 63 Md. 120; *New London, etc. R. R. Co. v. Boston, etc. R. R. Co.*, 102 Mass. 389; *Chapoton v. De-troit*, 38 Mich. 636; *Connors v. Carp River Iron Co.*, 54 Mich. 168, 19 N. W. 938; *Gates v. Shugrue*, 35 Minn. 392, 29 N. W. 57; *Morrison v. Rice*, 35 Minn. 436, 29 N. W. 168; *Plant-ers' Bank v. State*, 6 S. & M. 628; *Miller v. State*, 33 Miss. 356, 69 Am. Dec. 351; *McAfee v. Southern R. R. Co.*, 36 Miss. 669; *Swann v. Buck*, 40 Miss. 268; *House v. State*, 41 Miss. 737; *Hearn v. Brogan*, 64 Miss. 334, 1 So. 246; *State v. Wish.* 15 Neb. 448, 19 N. W. 686; *Omaha Real Est. & T. Co. v. Kragscow*, 47 Neb. 592, 66 N. W. 658; *Eaton v. Burke*, 66 N. H. 306, 22 Atl. 452; *Buckallew v. Ackerman*, 8 N. J. L. 48; *Poulson v. Union Nat. Bank*, 40 N. J. L. 563; *Mayor, etc. v. Jersey City, etc. R. R. Co.*, 20 N. J. Eq. 360; *Public School Trustees v. Trenton*, 30 N. J. Eq. 667; *Baca v. Bernalillo County Com'rs*, 10 N. M. 438; *Pierce v. Delamater*, 1 N. Y. 17; *People v. Palmer*, 52 N. Y. 83; *Mongeon v. People*, 55 N. Y. 613; *Lyddy v. Long Island City*, 104 N. Y. 218, 10 N. E. 155; *Matter of Washington*

Subsequent legislation repeals previous inconsistent legislation whether it expressly declares such repeal or not. In the nature of things it would be so, not only on the theory of intention, but because contradictions cannot stand to-

St. etc. R. R. Co., 115 N. Y. 442, 22 N. E. 356; *People v. Canvassers*, 77 Hun, 372, 28 N. Y. S. 871; *Bowen v. Lease*, 5 Hill, 221; *Farley v. De Waters*, 2 Daly, 192; *Church v. Rhodes*, 6 How. Pr. 281; *State v. Monger*, 111 N. C. 675, 16 S. E. 229; *Ruffner v. Hamilton County*, 1 Disney, 89; *State v. Halliday*, 63 Ohio St. 165, 57 N. E. 1097; *Bird v. Wasco County*, 3 Ore. 284; *Grant County v. Sels*, 5 Ore. 243; *Hurst v. Hawn*, 5 Ore. 275; *Strickland v. Geide*, 81 Ore. 373, 49 Pac. 982; *Reed v. Dunbar*, 41 Ore. 509, 69 Pac. 451; *Egypt Street*, 2 Grant's Cas. 455; *Southwark Bank v. Commonwealth*, 26 Pa. St. 446; *Prown's Estate*, 152 Pa. St. 401, 25 Atl. 630; *Speer v. Boggs*, 204 Pa. St. 504; *State v. Wilbor*, 1 R. I. 199; *Busby v. Riley*, 6 S. D. 401, 61 N. W. 164; *Furman v. Nichol*, 8 Cold. 432; *Browning v. Jones*, 4 Humph. 69; *Hockaday v. Wilson*, 1 Head, 113; *Wilcox v. State*, 3 Heisk. 110; *White v. Nashville, etc. R. R. Co.*, 7 Heisk. 518; *Home Ins. Co. v. Taxing District*, 4 Lea, 644; *Brown v. Chancellor*, 61 Tex. 437; *Fayette County v. Faires*, 44 Tex. 514; *Wood v. United States*, 16 Pet. 342, 10 L. Ed. 987; *Beals v. Hale*, 4 How. 87, 11 L. Ed. 865; *United States v. Sixty-seven Packages*, 17 How. 85, 15 L. Ed. 54; *United States v. Walker*, 23 How. 299, 16 L. Ed. 382; *McCool v. Smith*, 1 Black, 459, 17 L. Ed. 218; *Galena v. Amy*, 5 Wall. 705, 18 L. Ed. 560; *Furman v. Nichol*, 8 Wall. 49, 19 L. Ed. 870; *Distilled Spirits*, 11 Wall. 356, 20 L. Ed. 167; *Supervisors v. Lackawana I. & C. Co.*, 93 U. S. 619, 23 L. Ed. 989; *Movius v. Arthur*, 95 U. S. 144, 24 L. Ed. 420; *Arthur v. Homer*, 96 U. S. 137, 24 L. Ed. 811; *Clay County v. Society for Savings*, 104 U. S. 579, 26 L. Ed. 856; *Red Rock v. Henry*, 106 U. S. 596, 1 S. C. Rep. 434, 27 L. Ed. 251; *Ex parte Crow Dog*, 109 U. S. 556, 3 S. C. Rep. 396, 27 L. Ed. 1030; *District of Columbia v. Hutton*, 143 U. S. 18, 12 S. C. Rep. 369, 36 L. Ed. 60; *United States v. One Hundred Barrels of Spirits*, 2 Abb. (U. S.) 305, Fed. Cas. No. 15,948; *Johnson v. Byrd*, Hempst. 434, Fed. Cas. No. 7376; *Woods v. Jackson Co.*, 1 Holmes, 379, Fed. Cas. No. 17,983; *Forqueran v. Donnally*, 7 W. Va. 114; *Smith v. Hickman*, Cooke, 330; *Rex v. Middlesex*, 1 Dow. P. C. 117; *O'Flaherty v. Macdowell*, 6 H. L. Cas. 142; *Sharp v. Warren*, 6 Price, 131; *Dobbs v. Grand Junction W. W.*, L. R. 9 Q. B. D. 158.

The following cases illustrate the same point. In each case there was held to be a repeal by implication, but the question was of minor importance in the case or received but little consideration: *Zaner v. State*, 90 Ala. 651, 8 So. 698; *White v. Burgin*, 113 Ala. 170, 21 So. 882; *Hubman v. State*, 61 Ark. 482, 33 S. W. 843; *Hogane v. Hogane*, 57 Ark. 508, 22 S. W. 167; *People v. Superior Ct.*, 100 Cal. 105, 34 Pac. 492; *Davis v. Post*, 125 Cal. 210, 57 Pac.

gether.³⁷ The intention to repeal, however, will not be presumed, nor the effect of repeal admitted, unless the inconsistency is unavoidable, and only to the extent of the repugnance.³⁸

901; *Cook County v. Chicago*, 167 Ill. 109, 47 N. E. 210; *People v. Yancey*, 167 Ill. 255, 47 N. E. 521; *In Matter of Christian Busse*, 80 Ill. App. 261; *Garrigus v. Commissioners*, 157 Ind. 103, 60 N. E. 948; *Flat Rock v. Rust*, 18 Ind. App. 282, 47 N. E. 934; *Commonwealth v. Godshaw*, 92 Ky. 435, 17 S. W. 737; *O'Connor v. Commissioners*, 61 Minn. 370, 63 N. W. 1025; *Merri-man v. Great Northern Express Co.*, 63 Minn. 543, 65 N. W. 1080; *Gibbs v. Southern*, 116 Mo. 204, 22 S. W. 713; *Kennedy v. Savage*, 18 Mont. 119, 44 Pac. 400; *Davis v. Davis*, 27 Neb. 859, 44 N. W. 40; *Van Steen v. Beatrice*, 36 Neb. 421, 54 N. W. 677; *Schmidt v. Lewis*, 63 N. J. Eq. 565, 52 Atl. 707; *Tomlin v. Hildreth*, 65 N. J. L. 438, 47 Atl. 649; *Levy v. Ostega*, 9 N. M. 391, 54 Pac. 344; *Howard v. Clatsop County*, 41 Ore. 149, 68 Pac. 425; *Advance Thresher Co. v. Esteb*, 41 Ore. 469, 69 Pac. 447; *Board of Education v. Haralson*, 2 Okl. 170, 37 Pac. 1063; *Philadelphia v. Kates*, 150 Pa. St. 30, 24 Atl. 673; *Smith v. Wehrly*, 157 Pa. St. 407, 27 Atl. 700; *Commonwealth v. Railway Co.*, 162 Pa. St. 614, 29 Atl. 696; *Commonwealth v. Weir*, 165 Pa. St. 234, 30 Atl. 835; *Commonwealth v. Schneipp*, 166 Pa. St. 401, 31 Atl. 118; *Chester v. Pennell*, 169 Pa. St. 300, 32 Atl. 408; *Hays v. Cumberland County*, 186 Pa. St. 109, 40 Atl. 282; *Philadelphia & R. C. & I. Co.'s Petition*, 200 Pa. St. 352, 49 Atl. 797; *Frederick Street*, 1 Pa. Dist. Ct. 283; *Erhard v. Clear-*

field Coal Co., 5 Pa. Dist. Ct. 611; *Clark v. Koplin*, 6 Pa. Supr. Ct. 462; *Uhler v. Moses*, 10 Pa. Supr. Ct. 194; *Memphis v. Memphis Sav. Bank*, 99 Tenn. 104, 42 S. W. 16; *McCornick v. Thatcher*, 8 Utah, 294, 30 Pac. 91; *Taylor v. Robertson*, 16 Utah, 330, 52 Pac. 1; *Dahl v. Tibbals*, 5 Wash. 259, 31 Pac. 868; *Mansfield v. First Nat. Bank*, 5 Wash. 665, 32 Pac. 789, 999; *State v. Rusk*, 15 Wash. 403, 46 Pac. 387; *State v. Cheetham*, 17 Wash. 483, 49 Pac. 1072; *Yarwood v. Happy*, 18 Wash. 246, 51 Pac. 461; *Dennis v. Moses*, 18 Wash. 537, 52 Pac. 333, 40 L. R. A. 302; *Seattle v. Clark*, 28 Wash. 717, 69 Pac. 407; *Fisk v. Henarie*, 142 U. S. 459, 12 S. C. Rep. 207, 35 L. Ed. 1080; *Henrietta Min. & M. Co. v. Gardner*, 173 U. S. 123, 19 S. C. Rep. 327, 43 L. Ed. 637; *Minnehaha County v. Champion*, 5 Dak. 433, 41 N. W. 754.

³⁷ *Re Hickory Tree Road*, 43 Pa. St. 139, 142; *People v. Burt*, 43 Cal. 560; *Morrall v. Sutton*, 11 Phil. 533; *Commercial Bank of Natchez v. Chambers*, 8 Sm. & M. 9; *Constantine v. Constantine*, 6 Ves. 100; *Brown v. Great W. Ry. Co.*, 9 Q. B. D. 753; *Co. Lit.* 112. The adoption of a treaty with the stipulations of which the provisions of a state law are inconsistent is equivalent to the repeal of such law. *Denn ex demise Fisher v. Harnden*, 1 Paine, 55, Fed. Cas. No. 4819. The repeal of an act effects also a repeal of an act amendatory of the act repealed. *Hemstrat v. Wassum*, 49 Cal. 273.

³⁸ *Williams v. People*, 132 Ill. 574,

In *Winslow v. Morton*³⁹ the court sums up the general principles touching implied repeals in the form of rules which it formulates as follows:

(1) "That the law does not favor a repeal of an older statute by a later one by mere implication."

(2) "The implication, in order to be operative, must be necessary, and if it arises out of repugnancy between the two acts, the later abrogates the older only to the extent that it is inconsistent and irreconcilable with it. A later and an older statute will, if it is possible and reasonable to do so, be always construed together, so as to give effect not only to the distinct parts or provisions of the latter, not inconsistent with the new law, but to give effect to the older law as a whole, subject only to restrictions or modifications of its meaning, when such seems to have been the legislative purpose. A law will not be deemed repealed because some of its provisions are repeated in a subsequent statute, except in so far as the latter plainly appears to have been intended by the legislature as a substitute."

(3) "Where the later or revising statute clearly covers the whole subject-matter of antecedent acts, and it plainly appears to have been the purpose of the legislature to give expression in it to the whole law on the subject, the latter is held to be repealed by necessary implication."

Repeals by implication are not favored.⁴⁰ This means that it is the duty of the court to so construe the acts, if

24 N. E. 647; *McCarthy v. McCarthy*, 20 App. Cas. (D. C.) 195; *McConnell's Estate*, 5 Pa. Supr. Ct. 120.

³⁹ 118 N. C. 486, 491, 492, 24 S. E. 417.

⁴⁰ *Kinney v. Mallory*, 3 Ala. 626; *Cook v. Meyer Bros.*, 73 Ala. 580; *Jackson v. State*, 76 Ala. 26; *Herr v. Seymour*, 76 Ala. 270; *Abernathy v. State*, 78 Ala. 411; *Gilmore v. State*, 125 Ala. 59, 28 So. 382; *State v. Watts*, 23 Ark. 304; *Banks v. Yolo County*, 104 Cal. 258, 37 Pac.

900; *Hilton v. Curry*, 124 Cal. 84, 56 Pac. 784; *Ex parte Dolan*, 128 Cal. 460, 60 Pac. 1094; *People v. Pacific Imp. Co.*, 130 Cal. 442, 62 Pac. 739; *McCarthy v. McCarthy*, 20 App. Cas. (D. C.) 195; *Morris v. Hitchcock*, 21 App. Cas. (D. C.) 565; *Montgomery v. Board of Education*, 71 Ga. 41; *Central R. R. Co. v. Hamilton*, 71 Ga. 461; *Jensen v. Fricke*, 133 Ill. 171, 24 N. E. 515; *Cook County v. Gilbert*, 146 Ill. 268, 33 N. E. 701; *Trausch v. Cook*

possible, that both shall be operative.⁴¹ "When some office or function can by fair construction be assigned to both acts, and they confer different powers to be exercised for different purposes, both must stand, though they were designed

County, 147 Ill. 584, 85 N. E. 477; Rich v. Chicago, 152 Ill. 18, 88 N. E. 255; People v. Raymond, 186 Ill. 407, 57 N. E. 1066; Quincy v. O'Brien, 24 Ill. App. 591; Reese v. Western Union Tel. Co., 123 Ind. 294, 24 N. E. 163, 7 L. R. A. 583; Central Iowa Ry. Co. v. Supervisors, 67 Iowa, 199, 25 N. W. 128; Lambe v. McCormick, 116 Iowa, 169, 89 N. W. 241; Stephens v. Ballou, 27 Kan. 594; Kansas City v. Kimball, 60 Kan. 224, 56 Pac. 78; Randall v. Butler County, 65 Kan. 20, 68 Pac. 1033; Elizabethtown, etc. R. R. Co. v. Elizabethtown, 12 Bush, 233; Saul v. His Creditors, 5 Martin (N. S.), 569, 16 Am. Dec. 212; Herbert's Succession, 5 La. Ann. 121; Desban v. Pickett, 16 La. Ann. 350; Nixon v. Piffet, 16 La. Ann. 379; Collins v. Chase, 71 Me. 484; Dugan v. Gittings, 3 Gill, 138; Higgins v. State, 64 Md. 419, 1 Atl. 876; Brown v. McCormick, 28 Mich. 215; Breitung v. Lindauer, 37 Mich. 217; Ryan's Case, 45 Mich. 173, 7 N. W. 819; State v. McCurdy, 62 Minn. 509, 64 N. W. 1133; Beck v. St. Paul, 87 Minn. 381, 92 N. W. 328; State v. Slover, 134 Mo. 10, 31 S. W. 1054, 34 S. W. 1102; Dawson County v. Clark, 58 Neb. 756, 79 N. W. 822; Williams v. Potter, 2 Barb. 316; Van Renssalaer v. Snyder, 9 Barb. 302, 308; People v. Deming, 1 Hilt. 271; Bowen v. Lease, 5 Hill, 221; State v. Monger, 111 N. C. 675, 16 S. E. 229; Walcott v. Skauge, 6 N. D. 382, 71 N. W. 544; Ex parte Van Hagan, 25 Ohio St. 426; Winters v. George, 21 Ore. 251, 27 Pac. 1041; Ladd v. Gambell, 35 Ore. 393, 59 Pac. 113; Street v. Commonwealth, 6 W. & S. 209; Brown v. County Com'rs, 21 Pa. St. 37; Hanover Borough's Appeal, 150 Pa. St. 202, 24 Atl. 669; Commonwealth v. De Camp, 177 Pa. St. 112, 35 Atl. 601; State v. Alexander, 14 Rich. 247; Ball v. Kirk, 37 S. C. 395, 16 S. E. 151; State v. Beaufort, 39 S. C. 5, 17 S. E. 355; Co-Operative S. & L. Ass'n v. Fawick, 11 S. D. 589, 79 N. W. 847; Hockaday v. Wilson. 1 Head, 113; Cate v. State, 3 Sneed, 120; State v. King, 104 Tenn. 156, 57 S. W. 150; Zickler v. Union Bank & T. Co., 104 Tenn. 277, 57 S. W. 341; Matter of Gannett, 11 Utah, 283, 39 Pac. 496; Davis v. Creighton, 33 Gratt. 696; Somers v. Commonwealth, 97 Va. 759, 33 S. E. 384; Augusta Nat. Bank v. Beard, 100 Va. 687, 42 S. E. 694; Harford v. United States, 8 Cranch, 109, 3 L. Ed. 504; Wood v. United States, 16 Pet. 342, 10 L. Ed. 987; Arthur v. Homer, 96 U. S. 137, 24 L. Ed. 811; Red Rock v. Henry, 106 U. S. 596, 1 S. C. Rep. 484, 27 L. Ed. 251; Chew Heoug v. United States, 112 U. S. 536, 5 S. C. Rep. 255, 28 L. Ed. 770; Tracy v. Tuffly, 134 U. S. 206, 10 S. C. Rep. 527, 33 L. Ed. 879; Cope v. Cope, 137 U. S. 682, 11 S. C.

⁴¹ State v. Dupuis, 18 Ore. 372, 28 Pac. 255.

to operate upon the same general subject.”⁴² “Considerations of convenience, justice and reasonableness, when they can be invoked against the implication of repeal, are always very potent.”⁴³ “There must be such a manifest and total repugnance that the two enactments cannot stand.”⁴⁴ “The earliest statute continues in force unless the two are clearly inconsistent with and repugnant to each other, or unless in the later statute some express notice is taken of the former plainly indicating an intention to repeal it; and where two acts are seemingly repugnant, they should, if possible, be so construed that the latter may not operate as a repeal of the former by implication.”⁴⁵ These expressions of opinion are supported by numerous cases.⁴⁶

Rep. 222, 84 L. Ed. 832; *Frost v. Wenie*, 157 U. S. 46, 15 S. C. Rep. 532, 39 L. Ed. 614; *United States v. Greathouse*, 166 U. S. 601, 17 S. C. 701, 41 L. Ed. 1130; *Smith v. Hickman*, *Cooke*, 147; *United States v. Twenty-five Cases of Cloth*, *Crabbe*, 356, Fed. Cas. No. 16,563; *Regina v. Inhabitants*, 2 Q. B. 84.

⁴² *Woods v. Supervisors*, 136 N. Y. 403, 409, 32 N. E. 1011.

⁴³ *State v. McCurdy*, 62 Minn. 509, 64 N. W. 1183.

⁴⁴ *Commonwealth v. De Camp*, 177 Pa. St. 112, 35 Atl. 601.

⁴⁵ *People v. Raymond*, 186 Ill. 407, 57 N. E. 1066.

⁴⁶ The following are some of the more important cases: *City Council v. National B. & L. Ass'n*, 108 Ala. 836, 18 So. 816; *People v. Pacific Imp. Co.*, 130 Cal. 442, 62 Pac. 739; *Lovelace v. Tabor Mines & Mills Co.*, 29 Colo. 62, 66 Pac. 892; *McCarthy v. McCarthy*, 20 App. Cas. (D. C.) 195; *Jensen v. Fricke*, 133 Ill. 171, 24 N. E. 515; *Cook County v. Gilbert*, 146 Ill. 268, 33 N. E. 761; *Trausch v. Cook County*,

147 Ill. 534, 35 N. E. 477; *Rich v. Chicago*, 152 Ill. 18, 38 N. E. 255; *People v. Thornton*, 186 Ill. 162, 57 N. E. 841; *Kern v. People*, 44 Ill. App. 181; *People v. Mount*, 87 Ill. App. 194; S. C. affirmed, 186 Ill. 560; *Reese v. Western Union Tel. Co.*, 123 Ind. 294, 24 N. E. 163, 7 L. R. A. 583; *Shea v. Muncie*, 148 Ind. 14, 46 N. E. 138; *State v. Van Vliet*, 92 Iowa, 476, 61 N. W. 241; *Lambe v. McCormick*, 116 Iowa, 169, 89 N. W. 241; *Kansas City v. Kimball*, 60 Kan. 224, 56 Pac. 78; *Randall v. Butler County*, 65 Kan. 20, 68 Pac. 1083; *State v. Casimere*, 43 La. Ann. 442, 9 So. 438; *Moore v. Minneapolis*, 43 Minn. 418, 45 N. W. 719; *State v. McCurdy*, 62 Minn. 509, 64 N. W. 1183; *State v. Stratton*, 136 Mo. 423, 38 S. W. 83; *Reinhardt v. Fritz-oche*, 69 Hun, 565, 23 N. Y. S. 958; *Ackerson v. Supervisors*, 72 Hun, 616, 25 N. Y. S. 196; *People v. House of Refuge*, 22 App. Div. 254, 47 N. Y. S. 767; *Winslow v. Morton*, 118 N. C. 486, 24 S. E. 417; *Pease v. Ryan*, 7 Ohio C. C. 44; *Winters v. George*, 21 Ore. 251, 27 Pac. 1041;

One statute is not repugnant to another unless they relate to the same subject and are enacted for the same purpose.⁴⁷ "It is not enough that there is a discrepancy between different parts of a system of legislation on the same general sub-

Co-operative S. & L. Co. v. Fawick, 11 S. D. 589, 79 N. W. 847; *Matter of Gannett*, 11 Utah, 283, 39 Pac. 496; *University of Utah v. Richards*, 20 Utah, 457, 59 Pac. 96, 77 Am. St. Rep. 928; *Frost v. Wenie*, 157 U. S. 46, 15 S. C. Rep. 532, 39 L. Ed. 614.

In the following cases the question was a less important factor, but in each one the statutes in question were reconciled and there was held to be no repeal by implication: *State v. Styles*, 121 Ala. 363, 25 So. 1015; *Johnson v. State*, 132 Ala. 43, 31 So. 493; *Capron v. Hitchcock*, 98 Cal. 427, 33 Pac. 431; *Malone v. Bosch*, 104 Cal. 680, 38 Pac. 516; *Nickey v. Stearns Ranches Co.*, 126 Cal. 150, 58 Pac. 459; *Santa Cruz Rock Pav. Co. v. Lyons*, 133 Cal. 114, 65 Pac. 329; *Rathvon v. White*, 16 Colo. 41, 26 Pac. 323; *Canfield v. Leadville*, 7 Colo. App. 453, 43 Pac. 910; *Windom County Sav. Bank v. Himes*, 55 Conn. 433, 12 Atl. 517; *Bissell v. Dickerson*, 64 Conn. 61, 29 Atl. 226; *Gilbert v. Morgan*, 18 D. C. Rep. (7 Mackey), 296; *Hope v. Johnston*, 28 Fla. 55, 9 So. 830; *Ex parte Pella*, 28 Fla. 67, 9 So. 833; *Tampa v. Solomonson*, 85 Fla. 446, 482, 17 So. 581; *Georgia Southern & Fla. R. R. Co. v. George*, 92 Ga. 760, 19 S. E. 813; *Wilder's Sons Co. v. Walker*, 98 Ga. 508, 25 S. E. 571; *National Bank of Augusta v. Augusta Cotton Comp.*

Co., 104 Ga. 403, 30 S. E. 888; *Hartford Fire Ins. Co. v. Peoria*, 156 Ill. 420, 40 N. E. 967; *Canal Com'rs v. Sanitary Dist.*, 191 Ill. 326, 61 N. E. 71; *Johnson v. People*, 202 Ill. 53, 66 N. E. 877; *Neatherly v. People*, 24 Ill. App. 273; *Swigart v. People*, 50 Ill. App. 181; S. C. affirmed, 154 Ill. 284; *McGillen v. Wolff*, 83 Ill. App. 227; *White v. Wagar*, 88 Ill. App. 592; S. C. affirmed, 185 Ill. 195; *Bridge & Structural Iron Works Union v. Sigmund*, 88 Ill. App. 344; *Leeschke v. Miller*, 100 Ill. App. 137; *Allen v. Salem*, 10 Ind. App. 650, 38 N. E. 425; *Indianapolis v. Morris*, 25 Ind. App. 409, 58 N. E. 510; *Cedar Rapids, L. F. & N. W. Ry. Co. v. Elseffer*, 84 Iowa, 510, 51 N. W. 27; *Sherman v. Des Moines*, 100 Iowa, 88, 69 N. W. 410; *Kansas Breeze Co. v. Edwards*, 55 Kan. 630, 40 Pac. 1004; *Adam v. Stephens*, 88 Ky. 443, 11 S. W. 427; *Commonwealth v. Pulaski County*, 92 Ky. 197, 17 S. W. 442; *Farson v. Board of Com'rs*, 97 Ky. 119, 30 S. W. 17; *O'Mahoney v. Bullock*, 97 Ky. 774, 31 S. W. 878; *Commonwealth v. Basham*, 101 Ky. 170, 40 S. W. 253; *Fidelity & Dep. Co. v. Commonwealth*, 104 Ky. 579, 49 S. W. 467; *Raubold v. Commonwealth*, 21 Ky. L. R. 1125, 54 S. W. 17; *Murphy v. Louisville*, 24 Ky. L. R. 1574, 71 S. W. 934; *Kirk v. Robison*, 25 Ky. L. R. 1633; *State v. Police Jury*, 45 La. Ann.

⁴⁷ *People v. Burtleson*, 14 Utah, 258, 47 Pac. 87.

ject; there must be a conflict between different acts on the same specific subject.”⁴⁸ When there is a difference in the whole purview of two statutes apparently relating to the same subject, the former is not repealed.⁴⁹ Such is the gen-

249, 11 So. 948; Portland R. R. Extension Co., Appellants, 94 Me. 565, 48 Atl. 119; Gans v. Carter, 77 Md. 1, 25 Atl. 663; Frostburg Min. Co. v. Cumberland, etc. R. R. Co., 81 Md. 28, 31 Atl. 698; Lake Superior Ship Canal, Ry. & L. Co. v. Aplin, 79 Mich. 351, 44 N. W. 616; Dowling v. Salliotte, 83 Mich. 181, 47 N. W. 225; Merriman v. Peck, 96 Mich. 603, 53 N. W. 1021; People v. Kinney, 110 Mich. 97, 67 N. W. 1089; Wayne County Sup'rs v. Circuit Judge, 111 Mich. 33, 69 N. W. 83; Crane v. Circuit Judge, 111 Mich. 496, 69 N. W. 721; People v. Huntley, 112 Mich. 569, 71 N. W. 178; In re Bushey, 105 Mich. 64, 62 N. W. 1038; State v. Rieger, 59 Minn. 151, 60 N. W. 1087; State v. Anderson, 68 Minn. 208, 65 N. W. 265; Brown v. Heron Lake, 67 Minn. 146, 69 N. W. 710; State v. Holt, 69 Minn. 423, 72 N. W. 700; Kretzschmar v. Meehan, 74 Minn. 211, 74 N. W. 41; Louisville, N. O. & Tex. Ry. Co. v. State, 66 Miss. 662, 6 So. 203, 14 Am. St. Rep. 599, 5 L. R. A. 132; Jones v. Melchior, 71 Miss. 115, 13 So. 857; Kansas City v. Smart, 128 Mo. 272, 30 S. W. 773; State v. Summers, 142 Mo. 586, 44 S. W. 797; Albany v. Gilbert, 144 Mo. 224, 46 S. W. 157; Boone

Co. Home Mut. Ins. Co. v. Anthony, 68 Mo. App. 424; Kirkpatrick v. Mo., K. & T. Ry. Co., 71 Mo. App. 263; Springfield v. Hubbel, 89 Mo. App. 379; Lamar v. Adams, 90 Mo. App. 35; Chadwick v. Tatem, 9 Mont. 854, 368, 23 Pac. 729; In re Board of Pub. Lands & Buildings, 37 Neb. 425, 55 N. W. 1092; Hopkins v. Scott, 38 Neb. 661, 57 N. W. 891; Holt Co. Bank v. Holt County, 53 Neb. 827, 74 N. W. 259; State v. Cobb, 44 Neb. 434, 62 N. W. 867; Beatrice Paper Co. v. Beloit Iron Works, 46 Neb. 900, 65 N. W. 1059; Rhea v. State, 63 Neb. 461, 88 N. W. 789; State v. Donnelly, 20 Nev. 214, 19 Pac. 680; State v. Tyrrell, 22 Nev. 421, 41 Pac. 145; School District v. Prentiss, 66 N. H. 145, 20 Atl. 931; Newark v. Mount Pleasant Cem. Co., 58 N. J. L. 168, 38 Atl. 396; Bush v. Del., L. & W. R. R. Co., 166 N. Y. 210, 59 N. E. 838; Quinn v. New York, 68 App. Div. 175, 74 N. Y. S. 89; People v. Pugh, 57 Hun. 181, 10 N. Y. S. 684; People v. Vosburgh, 76 Hun. 562, 28 N. Y. S. 208; State v. Columbia George, 39 Ore. 127, 65 Pac. 604; Wm. Wilson & Son's Silversmith Co.'s Estate, 150 Pa. St. 285, 24 Atl. 636; Ferguson v. Pittsburgh, 159 Pa. St. 435, 28 Atl. 118; Hampe v. Traction Co., 165

⁴⁸ Commonwealth v. De Camp, 177 Pa. St. 112, 116, 35 Atl. 601.

⁴⁹ The King v. Downs, 3 T. R. 569; Bowen v. Lease, 5 Hill, 221, 225; United States v. Claflin, 97 U. S.

546, 24 L. Ed. 1082; United States v. Gear, 3 How. 120, 11 L. Ed. 523, 333; Miller v. Edwards, 8 Colo. 528, 9 Pac. 632.

eral doctrine, in which all the cases concur. In its practical administration other rules obtain suggested by the nature of the cases which occur, and the forms of legislation raising the question of repeal. There is an obvious difference in repealing effect between negative and affirmative statutes. We will endeavor to elucidate this distinction.

§ 248 (139). **Negative and affirmative statutes.**—A negative statute is one expressed in negative words; as, for example: “*No person* who is charged with an offense against the law shall be punished for such offense unless he shall have been duly and legally convicted,” etc. “*No indictment* for any offense shall be held insufficient for want of

Pa. St. 468, 80 Atl. 931; Plymouth Borough, 167 Pa. St. 612, 31 Atl. 933; Kuhlman v. Smeltz, 171 Pa. St. 440, 33 Atl. 358; Commonwealth v. Lloyd, 178 Pa. St. 308, 35 Atl. 816; School District v. Pittsburgh, 184 Pa. St. 156, 39 Atl. 64; Clarion Borough's Appeal, 189 Pa. St. 79, 41 Atl. 995; Uhler v. Moses, 200 Pa. St. 498, 50 Atl. 231; Mellor v. Pittsburgh, 201 Pa. St. 897, 50 Atl. 1011; Commonwealth v. Huffman, 6 Pa. Supr. Ct. 211; McHenry's Petition, 6 Pa. Supr. Ct. 464; Denniston's Appeal, 8 Pa. Supr. Ct. 212; Marshall v. Am. Tel. & Tel. Co., 16 Pa. Supr. Ct. 615; Kulp v. Luzerne County, 20 Pa. Supr. Ct. 7; Road in Green & G. Tps., 21 Pa. Supr. Ct. 418; Commonwealth v. Vetterlein, 21 Pa. Supr. Ct. 587; Blake v. Pittsburgh, etc. R. R. Co., 11 Pa. Dist. Ct. 151; McDonald v. New York, etc. R. R. Co., 23 R. L. 558, 51 Atl. 578; State v. Beaufort, 39 S. C. 5, 17 S. E. 355; Heston v. Mayhew, 9 S. D. 501, 70 N. W. 635; Durham v. State, 89 Tenn. 723, 18 S. W. 74; Taylor v. Badoux, 92 Tenn. 249, 21 S. W. 522; Harrington v. Galveston, 1 Tex. Ct.

App. 437; Aaron v. State, 34 Tex. Crim. App. 103, 29 S. W. 267; Braun v. State, 40 Tex. Crim. App. 236, 49 S. W. 620; State v. Forest, 7 Wash. 54, 83 Pac. 1079; State v. Wilson, 9 Wash. 218, 37 Pac. 424; State v. Fawcett, 17 Wash. 188, 49 Pac. 346; State v. Moyer, 17 Wash. 643, 50 Pac. 492; State v. Richards, 76 Wis. 354, 44 N. W. 1104; Haley v. Jump River L. Co., 81 Wis. 412, 51 N. W. 321; State v. Common Council, 96 Wis. 73, 71 N. W. 86; Vorous v. Phoenix Ins. Co., 102 Wis. 76, 78 N. W. 162; State v. Owen, 7 Wyo. 84, 50 Pac. 193; Syndicate Imp. Co. v. Bradley, 7 Wyo. 228, 51 Pac. 242, 52 Pac. 532; Standard Cattle Co. v. Baird, 8 Wyo. 144, 56 Pac. 598; Fisk v. Henarie, 142 U. S. 459, 12 S. C. Rep. 207, 35 L. Ed. 1080; North Am. Trading & Trans. Co. v. Smith, 93 Fed. 7, 35 C. C. A. 183; Wetzel v. Paducah, 117 Fed. 647; Oldham v. Mayor, 102 Ala. 357, 14 So. 793; First Nat. Bank v. Cooke, 8 Pa. Supr. 278; Debenture Corporation v. Warren, 9 Wash. 312, 37 Pac. 451.

the averment of any matter unnecessary to be proved," etc. An *affirmative* statute is one enacted in affirmative terms. Alderson, B., observed in *Mayor of London v. The Queen*,⁵⁰ that "the words 'negative' and 'affirmative' statutes mean nothing. The question is whether they are repugnant or not to that which before existed. That may be more easily shown when the statute is negative than when it is affirmative, but the question is the same." If a statute contrary to a former one be expressed in negative words it operates to repeal the former; so expressed it takes away any different common-law right or remedy.⁵¹ In that form it is prohibitory and generally mandatory.⁵² An act providing that "*no* corporation" shall interpose the defense of usury repeals the laws against usury as to corporations.⁵³ An act that "*no* beer" shall be sold without a license abrogates any previous exemptions from licensing regulations.⁵⁴ An act which absolutely forbids prize fighting repeals a prior act which permitted a prize fight on the payment of a tax of five hundred dollars.⁵⁵

The repugnance of any previous statute contrary to an enactment in negative words is very readily seen. Not so in the case of affirmative statutes. It is upon such enactments that debatable questions of repeal more frequently arise. The repeal in either case results from repugnancy,

⁵⁰ 13 Q. B. 33.

⁵¹ Bac. Abr., tit. Statute, G.

⁵² *Hurford v. Omaha*, 4 Neb. 336; *Bladen v. Philadelphia*, 60 Pa. St. 464; *State v. Smith*, 67 Me. 328; *People v. Allen*, 6 Wend. 486; *Koch v. Bridges*, 45 Miss. 247; *Rex v. Newcomb*, 4 T. R. 368; *Rex v. Leicester*, 9 D. & R. 772, 7 B. & C. 12; *Reg. v. Fordham*, 11 A. & El. 73; *Bowman v. Blyth*, 7 El. & Bl. 47; *Williams v. Swansea C. Nav. Co.*, L. R. 3 Ex. 158; *Liverpool Borough Bank v. Turner*, 2 De G., F. & J. 502; *Great Central Gas C. Co. v.*

Clarke, 11 C. B. (N. S.) 814. "Negative statutes are mandatory, and must be presumed to have been intended as a repeal of all conflicting provisions, unless the contrary can be clearly seen." *State v. Washoe Co. Com'rs*, 22 Nev. 203, 87 Pac. 486.

⁵³ *Ballston Spa Bank v. Marine Bank*, 16 Wis. 120; *Curtiss v. Leavitt*, 15 N. Y. 1, 85.

⁵⁴ *Read v. Storey*, 6 H. & N. 428. See *Strauss v. Heiss*, 48 Md. 292.

⁵⁵ *Sullivan v. State*, 32 Tex. Crim. App. 50, 34 S. W. 181.

but this is not so easily perceived when the repealing statute is affirmative in form. When it prescribes an exclusive rule it implies a negative, and repeals whatever of existing law stands in the way of its operation.⁵⁶ The intention to make the enactment exclusive may be deduced from the nature of the subject, and its necessary operation in comparison with the necessary effect of prior laws. A statute in derogation of an existing statute will be strictly construed in consequence of implied repeals being regarded with disfavor.⁵⁷

§ 249 (140). **Repealing effect of affirmative statutes conferring power and regulating its exercise.**—In organizing the powers of government there is a definite and precise scheme or plan, and a unity and singleness of means employed to carry it into effect. There is but one chief magistrate, one legislature, one judiciary. There is but one revenue system, one police system. Public duties are defined and imposed on officers designated with certainty, without duplication or confusion, except by inadvertence. The exercise of power by one over another must be authorized by law; its possession and scope will be such as is granted; when granted, if the mode of its exercise be also prescribed, it must be followed. In the grants, and in the regulation of the mode of exercise, there is an implied negative; an implication that no other than the expressly granted power passes by the grant; that it is to be exercised only in the prescribed mode.⁵⁸ While an affirmative

⁵⁶ *Ex parte Joffe*, 46 Mo. App. 860; *Gassenheimer v. Dist. of Columbia*, 6 App. Cas. (D. C.) 108.

⁵⁷ *Commonwealth v. Knapp*, 9 Pick. 496; *State v. Norton*, 23 N. J. L. 33; *Melody v. Reab*, 4 Mass. 471; *Dwelly v. Dwelly*, 46 Me. 377; *Burnside v. Whitney*, 21 N. Y. 148; *Gibson v. Jenney*, 15 Mass. 205; *Wilbur v. Crane*, 13 Pick. 284; *Bailey v. Bryan*, 3 Jones (N. C.),

357, 67 Am. Dec. 246; *Schuyler v. Mercer*, 4 Gilm. 20; *Lock v. Miller*, 3 Stew. & Port. 13; *White v. Johnson*, 23 Miss. 68; *Clarke v. State*, id. 261; *Williams v. Potter*, 2 Barb. 316; *Peyton v. Moseley*, 3 T. B. Mon. 77, 80; *Street v. Commonwealth*, 6 Watts & S. 209; *Morlot v. Lawrence*, 1 Blatch. 608, Fed. Cas. No. 9815.

⁵⁸ *People v. Mayor, etc. of N. Y.*,

provision in one statute does not necessarily negative affirmative provisions on the same subject in the same or other statutes,⁵⁹ yet affirmative words may and often do imply a negative, not only of what is not affirmed, but of what has been previously affirmed, and as strongly as if expressed. An affirmative enactment of a new rule implies a negative of whatever is not included, or is different; and if by the language used a thing is limited to be done in a particular form or manner, it includes a negative that it shall not be done otherwise.⁶⁰ An intention will not be ascribed to the law-making power to establish conflicting and hostile systems upon the same subject, or to leave in force provisions of law by which the later will of the legislature may be thwarted and overthrown. Such a result would render legislation a useless and idle ceremony, and subject the law to the reproach of uncertainty and unintelligibility.⁶¹ An act which required trustees to collect debts due to banks whose charters were forfeited will be repealed by a later act which requires the trustees to sell all such debts.⁶² If there are two acts for the assessment and collection of a tax, and by one a notice of the election to vote it must be posted ten days, and published two weeks, and the tax is not to exceed one dollar and fifty cents on the hundred dollars, and by the other the notice is posted twenty days, and pub-

32 Barb. 102, 121; *State, the United R. & Can. Co. pros., v. Commissioner*, 37 N. J. L. 240; *Rex v. Northleach & W. Road*, 5 B. & Ad. 978; *Janney v. Buell*, 55 Ala. 408; *Lessee of Moore v. Vance*, 1 Ohio, 1-10; *Phillips v. Ash*, 63 Ala. 414; *Excelsior Petroleum Co. v. Embury*, 67 Barb. 261; *Rochester v. Barnes*, 26 Barb. 657; *Johnston's Estate*, 33 Pa. St. 511; *Townsend's Case*, Plowd. 118; *State, N. Hudson Co. R. R. Co. pros., v. Kelley*, 34 N. J. L. 75; *Evansville v. Bayard*, 39 Ind. 450; *North Canal St. Road Case*, 10

Watts, 351, 86 Am. Dec. 185; *New Haven v. Whitney*, 36 Conn. 378; *Greensboro v. McAdoo*, 112 N. C. 359, 17 S. E. 178.

⁵⁹ *Plattsburg v. People's Telephone Co.*, 88 Mo. App. 306.

⁶⁰ *Wells v. Supervisors*, 102 U. S. 625, 26 L. Ed. 122; *Chandler v. Hanna*, 78 Ala. 390; *Ex parte Joffe*, 46 Mo. App. 360; *Webb v. Midway Lumber Co.*, 68 Mo. App. 546.

⁶¹ *Lyddy v. Long Island City*, 104 N. Y. 218, 10 N. E. 155.

⁶² *Commercial Bank of Natchez v. Chambers*, 8 Sm. & M. 9.

lished three weeks, and the rate of taxation is not to exceed seventy cents on the hundred dollars, the two acts are repugnant, and the later repeals the former.⁶³ An act provided that in case of land damages for laying out roads, the county court should institute and prosecute in their names, in the circuit court, proceedings to ascertain the just compensation to be paid. It was held to be inconsistent with and to repeal a prior statute which, in such cases, required that the county court award a writ of *ad quod damnum* returnable to itself.⁶⁴ Two acts related to the same subject-matter, the ferries of New York; the former to the ferries to Long Island, and the latter to all the New York ferries. They provided different and inconsistent modes of leasing or licensing the same. The last prevailed, displacing the other.⁶⁵ An act granting the exclusive right to construct and use street railroads in all the streets of a city will repeal a prior act of the same tenor.⁶⁶ If two independent officers or public boards have each power to number and alter the numbers of houses in a city, for the purpose of distinguishing them, the purpose would be frustrated by the duplication if both could act; therefore the power last granted was held exclusive.⁶⁷

A statute creating a board of public works for cities of the first class and conferring powers on such boards impliedly repeals so much of former statutes as confers the same powers upon the city councils.⁷¹ And generally an act vesting the control of a thing in one body or board is repealed by a subsequent act vesting the same control in another body or board.⁷² An act vesting in a court the power to change the name of any corporation was held to

⁶³ *People v. Burt*, 43 Cal. 560; *State v. Newark*, 28 N. J. L. 491; *Bowen v. Lease*, 5 Hill, 221.

⁶⁴ *Herron v. Carson*, 26 W. Va. 62.

⁶⁵ *People v. Mayor, etc. of N. Y.*, 32 Barb. 102, 121.

⁶⁶ *West End, etc. R. R. Co. v. Atlanta St. R. R. Co.*, 49 Ga. 151.

⁶⁷ *Daw v. Metropolitan Board*, 12 C. B. (N. S.) 161.

⁷¹ *Nelden v. Clark*, 20 Utah, 382, 59 Pac. 524, 77 Am. St. Rep. 917.

⁷² *Hawkins v. Roberts*, 122 Ala. 130, 27 So. 327; *Sinking Fund Com'rs v. George*, 104 Ky. 260, 47 S. W. 779, 84 Am. St. Rep. 454.

be repealed by a subsequent law authorizing the governor to improve, amend or alter the articles or conditions of any charter.⁷³ Two acts providing for the drainage of swamp and low lands by different methods may co-exist;⁷⁴ so of two laws providing for different modes of service of process.⁷⁵ A statute conferring upon the governor the power to revoke a commission in the militia whenever in his judgment such action was necessary or expedient for the public good or good of the service was held not to be repealed by a law that a commissioned officer might be honorably discharged in certain specified cases and dismissed for specified causes.⁷⁶ Where a statute provides for a writ of error to a specified court, it operates as a repeal of any previous statute giving a writ of error to another and different court.⁷⁷

§ 250 (141). *New grant of part of power already possessed.*—Where a later act grants to an officer or tribunal a part of a larger power already possessed, and in interpreted by themselves import a grant of all the power which the grantee is intended to exercise, it repeals the part from which the larger power had been derived. In the case of Kentucky of 1799 the county courts had the power to appoint county jailers to serve during their term of office. In 1802 a provision was inserted in an act to amend the laws, "that the several county courts respectively have full power to remove the keepers of the jails whenever it shall appear to them that such keepers have been guilty of neglect of duty." This was held to repeal the prior statute.⁷⁸

⁷³ *Fort Pitt B. & L. Ass'n v. Model Plan B. & L. Ass'n*, 159 Pa. St. 508, 28 Atl. 215. To same effect.

⁷⁴ *McGivney v. Pierce*, 87 Cal. 124, 25 Pac. 269.

⁷⁵ *Duke v. O'Bryan*, 100 Ky. 710, 39 S. W. 444, 824.

⁷⁶ *Baldinger v. Rockford Ins. Co.*, 80 Minn. 147, 82 N. W. 1992.

⁷⁷ *Winslow v. Mc*, 486, 24 S. E. 417.

⁷⁸ *Brown v. United States*, 8 S. 631, 19 S. C. Rep. 148.

⁷⁹ *Gorham v. Luc*, 148. Marshall, J.,

"As it is unquestionable that the power of the legislature to prescribe the tenure of

While a statute existed giving appeals to the county court from judgments of justices of the peace in all cases without regard to the amount, other than upon the verdict

jailer, and to regulate the power of the county court in vacating that office, continued the same after the act of 1799 as it had been before; and as the subsequent legislative will upon a subject thus completely within its control must, if sufficiently indicated, prevail over that will as previously expressed, the inquiry is whether there is in the twentieth section of the act of 1802 any sufficient indication of the legislative will or intention that thenceforth the office of jailer shall not be held at the mere pleasure of the county court, but should only be subject to forfeiture by neglect of duty, and be thus placed on a footing with the great mass of other offices in this commonwealth. Did the legislature intend to express in this twentieth section the whole power of removal as it should thenceforth exist in the county court? If they did, then as the power previously existing is inconsistent with this intention, and as the proviso conferring the previous power is therefore inconsistent with the twentieth section of the act of 1802, intended to restrict that power, the proviso comes clearly within the purview of this twentieth section, and is embraced by the repealing clause of the statute, if indeed it would not be repealed by implication without it.

"If it were allowable to suppose that the legislature who framed and enacted this twentieth section were ignorant of the proviso in the act

of 1799, and of the power thereby vested in the county court, of removing the jailer at pleasure, the inference would seem to be irresistible, that as the twentieth section of the act of 1802 was intended to confer a new power on the county court, so it was intended to express, and did express, the whole power which it was intended that they should have over the subject. This would necessarily be the construction of the section considered as conferring a new power. And as every person ignorant of the pre-existing law would, upon reading this section, understand it as conferring a new power, so every such person would understand it as conferring all the power which the court was intended to have. But supposing, as one must do, that the legislature of 1802 understood well the pre-existing law on the subject to which this twentieth section relates, that they knew that the county court had already the power of removing the jailer, not only for breach of duty, but for any other cause, and without cause and without question, then the inquiry comes, for what purpose and with what intent do these legislators introduce into this act for amending the penal laws, a section which professes to make a formal and substantial grant of power, which, construed by its terms, would be universally understood as granting a new power, and therefore as expressing the whole power which

of a jury, a new statute was passed which allowed appeals from such judgments when they exceeded \$5. It was held a repeal of the former statute; for otherwise there would

it was intended that the grantee should have? Why make an express grant of a part of the power, if understanding that the whole power, including this part, was already vested in the court, it was intended that the whole power, including this part, should still remain? If the proviso of the act of 1799 remained in force after the enactment of the twentieth section of the act of 1802, then it is absolutely certain that so much of that section as relates to the removal of county jailers was utterly without effect, and might just as well have been out of the section. And the same is true, if any part of the pre-existing power beyond that which is expressed in this twentieth section continued to exist after its enactment. For to the extent that the power is expressed in this section, it already existed and would have continued to exist without any new grant, and the new grant can have no effect whatever, unless it have the effect of restricting the pre-existing power, by bringing it down to the measure of the new grant. Can we then say that the legislature did not intend this section to have any effect and virtually expunge it from the statute? Or must we allow to it the only effect which it can possibly have, by understanding it to be, what if construed exclusively with reference to its own terms it must be understood to be, a substantial grant of power expressing all the

power the grantee was intended to have, and withholding or resuming whatever beyond this had been formerly granted? This question does not arise upon a single expression or clause of a sentence, making casual reference to a subject foreign to the context, and which may have been inadvertently introduced. Here is an entire section, which relates to no other subject but the power of removing the officers therein named, and of which the principal subject is the power of removing county jailers, and the principal object (apparently the least) to confer or regulate that power. The section must have been introduced deliberately, designedly, and to effect some particular purpose. Are we at liberty to say that it should have no effect whatever!

"It is not a case of the re-enactment of a former law in the same words, or with additional provisions, nor of a regrant of a pre-existing power to the same or a greater extent. It is not a case of cumulative or additional power or right or remedy. Nor does it come within the rule that a subsequent affirmative statute does not repeal a previous one, which can only apply where both can have effect. This is a formal and express grant of limited power to a depository which already had unlimited power. And it can have no effect, nor be ascribed to any other purpose, but that of limiting the extent of the existing power. If cer-

be imputed to the legislature the folly of enacting a statute without purpose, and which leaves the law precisely as it

certain provisions of two statutes are identical, the last need not be construed as repealing, but merely as continuing or re-affirming, the first, for which there might be various reasons. So if a statute give a remedy, or provide that certain acts shall be sufficient for the attainment or security of certain objects, and a subsequent statute declare that a part of the same remedy or some of the same acts, or other acts entirely different, shall suffice for the accomplishment of the same object, here the latter act does not necessarily repeal the former, except so far as it may be expressed or implied in the former that the end shall be attained by no other mode but that which it prescribes. If there be no such restriction in the first, there is no conflict between them. Both may stand together with full effect, and the provisions of either may be pursued.

"But if a subsequent statute requires the same, and also more than a former statute had made sufficient, this is in effect a repeal of so much of the former statute as declares the sufficiency of what it prescribes. And if the last act professes, or manifestly intends, to regulate the whole subject to which it relates, it necessarily supersedes and repeals all former acts, so far as it differs from them in its prescriptions. The great object, then, is to ascertain the true interpretation of the last act. That being ascertained, the necessary conse-

quence is, that the legislative intention thus deduced from it must prevail over any prior inconsistent intention to be deduced from a previous act.

"Since, then, the twentieth section of the act of 1802, interpreted according to its own terms, imports a substantial grant of power, and of all the power that the county courts were intended to have on the subject, and since it would be useless and without effect, unless thus understood as regulating the whole subject of the removal of jailers by the county courts, we feel bound to give to it this interpretation: and, therefore, to conclude that, after that act took effect, the county courts had no other power of removing jailers but that which the twentieth section confers, of removing them whenever it shall appear to the court that such jailers have been guilty of a neglect of duty. If this twentieth section had been the first and only enactment on the subject, all must have concurred in the conclusion that it was intended to regulate the whole subject, and that it granted all the power which the court was intended to have. The difficulty, or rather the embarrassment, in the case, arises from the fact that a previous law had given to the same grantee unlimited power on the same subject, and that this twentieth section makes no reference to the previous law, and contains no express words of restriction or change, but, granting

stood before.⁷⁹ By an act of 1776, adopted by Kentucky from Virginia, it was provided that "a person residing in any other country, for passing any lands and tenements in this commonwealth by deed, shall acknowledge or prove the same before" the mayor or chief magistrate of the city or corporation wherein or near to which he resides. But where there was no mayor or other chief magistrate within the county, then a certificate under the hands and seals of two justices or magistrates of the county, that the proof or acknowledgment has been made before them, should be sufficient. And "where any person making such conveyance shall be a *feme covert*, her interest in any lands or tenements should not pass thereby unless she personally acknowledge the same before such mayor or chief magistrate,

an express and limited power, is framed as if it were the first and only act on the subject. But do not these circumstances indicate that it is to be construed as if it were the only act on the subject? Or shall the first act, which is inferior in authority so far as they conflict, so far affect the construction of the last as to deprive it of all effect? We say the last act must have effect according to its terms and its obvious intent. And as both cannot have full operation according to their terms and intent, the first and not the last act must yield. If it could be supposed to have been a matter of doubt whether, under the act of 1799, the county court had power to remove the jailers for neglect of duty, or if any motive could be assigned for introducing a separate section expressly granting this power, except the purpose of expressing the whole power which the courts were to have, then the basis of the construction which

we have assumed would be greatly weakened, if not destroyed. But we do not perceive that any other plausible motive can be assigned. And as, notwithstanding the act of 1799, it was entirely within the legislative power to withdraw, retract or modify the power of removal thereby given to the county courts, and the courts had no right of resistance or refusal, we regard the subsequent grant of a more limited power, advisedly and formally made, as implying the resumption of the old grant, and a restriction of the power according to the terms of the new one, as, by the acceptance of a new lease during a subsisting term, the rights of the tenant are governed by the terms of the new grant."

⁷⁹ Curtis v. Gill, 84 Conn. 49; Parrott v. Stevens, 37 Conn. 93. See United States v. Ten Thousand Cigars, 1 Woolw. 123, Fed. Cas. No. 16,451.

or before two justices or magistrates as aforesaid." By an act passed in 1785, entitled "An act for regulating conveyances," it was provided that "when husband and wife shall have sealed and delivered a writing purporting to be a conveyance of any estate or interest, if she appear in court and being examined privily and apart from her husband, by one of the judges thereof, etc., or if before two justices of the peace of that county in which she dwells, who may be empowered by commission, to be issued by the clerk of the court wherein the writing ought to be recorded," etc., it shall be sufficient to convey her estate. The court by McLean, J., said: "By the act of 1776 the acknowledgment and privy examination of a *feme covert* were required to be made before the mayor or other chief magistrate, or before two justices or magistrates of the town or place where she shall reside. The acknowledgment before two justices is retained in the act of 1785 with this additional requisite, that the justices shall be commissioned, as provided, to perform this duty. This necessarily repeals that part of the prior act which authorized the acknowledgment to be taken before two justices without being commissioned. The latter act is in this regard repugnant to the former. The provisions cannot stand together, as the latter act superadds an essential qualification of the justices not required by the former.

"But the important question is whether, as the act of 1785 made no provision authorizing a mayor of a city to take the acknowledgment of a *feme covert*, that provision in the act of 1776 is repealed by it. In this respect it is clear there is no repugnancy between the two acts. The two provisions may well stand together; the latter is cumulative to the former."⁸⁰

§ 251 (142). **Repealing effect of new statutes changing criminal laws.**—Penal statutes include the definition of offenses, and of punishments, not necessarily in the same act; but the definition of the offense and the prescription of

⁸⁰ *Davies v. Fairbairn*, 8 How. tenum, 56 Miss. 232. See *Swann v. 636*, 11 L. Ed. 760; *Gibbons v. Brit-Buck*, 40 Miss. 268-307.

the penalty are so allied that legislation affecting one may affect the other.⁶¹ Where a statute prescribes a new punishment for a common-law offense, it is still a common-law offense,⁶² and only the punishment is changed.⁶³ But where a common-law offense is defined and enacted by statute, which also prescribes the penalty, the common law is repealed and the offense is thus made a statutory offense.⁶⁴ A change in the elements of the offense or in the elements or amount of the penalty will destroy the identity of the offense and effect a repeal to the extent of the repugnance.⁶⁵ When the new law uses the same words as the old, the second is declaratory and not repugnant, and there is no repeal.⁶⁶ A re-enactment has been held a continuation though the punishment by imprisonment is reduced.⁶⁷ A statute

⁶¹ *Commonwealth v. Kimball*, 21 Pick. 878; *Commonwealth v. McDonough*, 18 Allen, 581; *Flaherty v. Thomas*, 12 Allen, 428.

⁶² *Williams v. Reg.*, 7 Q. B. 250; *McCann v. State*, 18 Sm. & M. 471; *State v. Daley*, 29 Conn. 272, 276.

⁶³ *King v. Bridges*, 8 East, 52.

⁶⁴ *Commonwealth v. Marshall*, 11 Pick. 850, 22 Am. Dec. 377; *Commonwealth v. Cooley*, 10 Pick. 87; *State v. Boogher*, 71 Mo. 631.

⁶⁵ *Norris v. Crocker*, 18 How. 429, 14 L. Ed. 210; *Dowdell v. State*, 58 Ind. 888; *State v. Smith*, 44 Tex. 443; *State v. Whitworth*, 8 Port. (Ala.) 484; *Rex v. Cator*, 4 Burr. 2026; *King v. Davis*, 1 Leach's Cas. 271; *United States v. Tynen*, 11 Wall. 88, 20 L. Ed. 153; *Gorman v. Hammond*, 28 Ga. 85; *Mullen v. People*, 31 Ill. 444; *Michell v. Brown*, 1 E. & E. 267; *United States v. Case of Pencils*, 1 Paine, 400, Fed. Cas. No. 15,924; *People v. Bussell*, 59 Mich. 104, 28 N. W. 806; *State v. Horsey*, 14 Ind. 185; *State v. Pierce*, id. 302; *Leigh-*

ton v. Walker, 9 N. H. 59; *Nichols v. Squire*, 5 Pick. 168; *State v. Grady*, 84 Conn. 118; *State v. Daley*, 29 id. 272; *Commonwealth v. Gardner*, 11 Gray, 438; *State v. Massey*, 103 N. C. 356, 9 S. E. 632; *Turner v. State*, 40 Ala. 21; *Lindzey v. State*, 65 Miss. 542, 5 So. 99, 7 Am. St. Rep. 674; *Miles v. State*, 40 Ala. 39; *Buckalew v. Ackerman*, 8 N. J. L. 48; *People v. Tisdale*, 57 Cal. 104; *Reg. v. Youle*, 6 H. & N. 758; *State v. Hamblin*, 4 Rich. (N. S.) 1; *Sherman v. State*, 17 Fla. 888; *Pitman v. Commonwealth*, 2 Rob. (Va.) 818; *Magruder v. State*, 40 Ala. 847; *Smith v. State*, 1 Stew. 506; *Wall v. State*, 28 Ind. 150; *State v. Craig*, id. 185; *Drew County v. Bennett*, 48 Ark. 864; *Hodnett v. State*, 28 Miss. 28, 5 So. 518.

⁶⁶ *Commonwealth v. G* Gray, 438; *State v. G* Wis. 298. See *Hirschbr* ple, 6 Colo. 145.

⁶⁷ *State v. Wish*, 15 N. W. 686. See *Nichols*

fixing the penalty for a wilful and malicious trespass will not repeal an existing law fixing a different penalty for a wilful trespass. The elements of the offense defined in one section are not the same as those which constitute the offense in the other; the last act is cumulative; the two can stand together.⁸⁸ A statute establishing and defining two degrees of murder to be found by the jury, one punishable according to the existing law by death, and the other by a milder punishment, imprisonment for life, will not have the effect to repeal the law against murder which was punishable by death without distinction of degrees.⁸⁹

§ 252 (143). Where a later statute contains no reference to the former statute, and defines an offense containing some of the elements constituting the offense defined in such former statute and other elements, it is a new and substantive offense. The two statutes can stand together and there is no repeal.⁹⁰ So if the later statute prescribe a punishment for acts with only a part of the ingredients or incidents essential to constitute the offense defined in a former statute.⁹¹ But if the same offense, identified by name or otherwise, is altered in degrees or incidents, or if a felony is changed to a misdemeanor, or *vice versa*,⁹² the statute making such

5 Pick. 168; Gorman v. Hammond, 28 Ga. 85; State v. Whitworth, 8 Port. 484; Smith v. State, 1 Stew. 506; Carter v. Hawley, Wright (Ohio), 74; Leighton v. Walker, 9 N. H. 59; Flaherty v. Thomas, 12 Allen, 428; Blackwell v. State, 45 Ark. 90.

⁸⁸ State v. Alexander, 14 Rich. 247; Blackwell v. State, 45 Ark. 90. See Coghill v. State, 37 Ind. 111.

⁸⁹ Commonwealth v. Gardner, 11 Gray, 438.

⁹⁰ State v. Alexander, 14 Rich. 247; State v. Benjamin, 2 Ore. 125; Bennett v. State, 2 Yerg. 472; Rex v. Downs, 3 T. R. 569; Pons v. State, 49 Miss. 1; People v. Koenig,

9 App. Div. 436, 41 N. Y. S. 283; Golonbieski v. State, 101 Wis. 333, 77 N. W. 189.

⁹¹ Coghill v. State, 37 Ind. 111. A statute imposing a penalty on the sale of fireworks without special license is not repugnant to and therefore not repealed by a subsequent act imposing taxes for revenue purposes on the manufacturers and venders of fireworks. Homer v. Commonwealth, 106 Pa. St. 221, 51 Am. Rep. 521; Youngblood v. Sexton, 32 Mich. 406, 425, 20 Am. Rep. 654. See State v. Duncan, 16 Lea, 79.

⁹² Rex v. Davis, 1 Leach, 271; People v. Tisdale, 57 Cal. 104; Mon-

changes has the effect to repeal the former statute. Two penal provisions, passed in one act or at different times, may co-exist though covering in part the same acts, and applicable in part to the same persons, and prescribing different penalties. One will not render the other nugatory contrary to the legislative intent.⁹³

Where a new law covers the whole subject-matter of an old one, adds new offenses, and prescribes different penalties for those enumerated in the old law, then such former law is repealed by implication.⁹⁴ The effect would probably be that of revision and repeal, though no new offenses were added; it is enough that the new statute embraces all the provisions of previous statutes on the same subject which are intended to have force.⁹⁵ The revision of criminal laws or new legislation which manifestly is intended to furnish the only rule that shall govern has the same effect as like legislation has on other subjects.⁹⁶ In each case it is a question of legislative intent. The question ever is, Did the legislature intend to repeal the former law, or was the new law intended to be merely cumulative?⁹⁷ In *Re Baker*,⁹⁸ Bramwell, B., said: "When a statute directs something to be done in a certain event, and another law is made which

geon v. People, 55 N. Y. 613; *Hayes v. State*, 55 Ind. 99; *Michell v. Brown*, 1 E. & E. 267; *Sherman v. State*, 17 Fla. 888; *State v. Young*, 49 La. Ann. 70, 21 So. 142; *State v. Brown*, 48 La. Ann. 1569, 21 So. 143.

⁹³ *Davies v. Harvey*, L. R. 9 Q. B. 438; *The Industry*, 1 Gall. 114, Fed. Cas. No. 7028.

⁹⁴ *Norris v. Crocker*, 13 How. 429, 14 L. Ed. 210; *Dowdell v. State*, 58 Ind. 333; *Johns v. State*, 78 id. 332, 41 Am. Rep. 577; *Michell v. Brown*, 1 E. & E. 267.

⁹⁵ *Commonwealth v. Kelliher*, 12 Allen, 480. See *Nusser v. Commonwealth*, 25 Pa. St. 126. A statute fixed a tax on the exercise of a cer-

tain privilege and a penalty for exercising it without a license; a subsequent act changed the tax and provided a remedy for its collection, but was silent as to the penalty; held, that there was no such incompatibility as to cause a repeal. *Cate v. State*, 3 Sneed, 120.

⁹⁶ *United States v. Tynen*, 11 Wall. 88, 20 L. Ed. 153; *State v. Watts*, 23 Ark. 304.

⁹⁷ *Sifred v. Commonwealth*, 104 Pa. St. 179; *United States v. Case of Pencils*, 1 Paine, 400, Fed. Cas. No. 15,924; *Osborn, Ex parte*, 24 Ark. 479; *Coats v. Hill*, 41 id. 149.

⁹⁸ 2 H. & N. 219.

appoints something else to be done, not contradictory but more comprehensive, and including the former, I cannot help thinking that the first act is gone."

Where, however, the new statute contains no reference for repeal or otherwise to existing statutes, and defines an offense made punishable by a prior law, and imposes a new punishment, it will not repeal such prior law as to existing cases; for, as the new law will only operate prospectively, there is as to offenses already committed no conflict. The prior law will operate as to all offenses against it committed up to the time that the new law goes into effect, and the trial may be had and judgment pronounced afterwards." The same rule would govern where a cumulative penalty is prescribed.¹

A statute providing for or defining an offense created by a previous statute, and providing a materially different punishment, repeals the former act.² If the punishment prescribed by statute for larceny of any sum above \$50 be imprisonment in the state's prison not exceeding five years, and subsequently the legislature enact a severer punishment for larceny of an amount exceeding \$2,000, the law is not thereby changed as to larcenies of amounts below the latter sum.³ The repugnance extends no further, and is the limit of repeal by implication.⁴ So where a statute imposed a

⁹⁹ *Mongeon v. People*, 55 N. Y. 618; *People v. Hobson*, 48 Mich. 27, 11 N. W. 771; *Pitman v. Commonwealth*, 2 Rob. (Va.) 818; *Mitchell v. Duncan*, 7 Fla. 13; *Miles v. State*, 40 Ala. 39; *Commonwealth v. Pegram*, 1 Leigh, 569; *Commonwealth v. Wyatt*, 6 Rand. 694; *State v. Young*, 49 La. Ann. 70, 21 So. 142. See *Rex v. McKenzie*, R. & R. C. C. 429.

¹ *Shoemaker v. State*, 20 N. J. L. 153.

² *State v. Smith*, 44 Tex. 443; *Gorman v. Hammond*, 28 Ga. 85; *State*

v. Horsey, 14 Ind. 185; *State v. Pierce*, 14 Ind. 302; *Mullen v. People*, 31 Ill. 444; *Michell v. Brown*, 1 E. & E. 267; *Robinson v. Emerson*, 4 H. & C. 355; *Cole v. Coulton*, 3 E. & E. 693; *Henderson v. Sherborne*, 2 M. & W. 236; *Attorney-General v. Lockwood*, 9 M. & W. 891; *Frazier v. Alexander*, 75 Cal. 147, 16 Pac. 757; *In re Ambrosewf.*, 109 Cal. 264, 41 Pac. 1101.

³ *State v. Grady*, 34 Conn. 118; *State v. Miller*, 58 Ind. 399.

⁴ By a statute the punishment for stealing a cow was a fine of

certain fine and a *minimum* term of imprisonment, it was held not repealed by a subsequent statute which gave the court a discretion on proof to mitigate this punishment. The court say: "It does not change any previously prescribed penalty, nor does it substitute a new or different kind of punishment in the place of that which the former statutes had affixed to certain classes of offenses. The effect of the statute was merely to vest in the court a discretion by the exercise of which they were authorized to mitigate the sentence to which the offender was liable, by dispensing with a portion of the prescribed punishment. The extent of the repeal of previous statutes is then only this: That, in a certain class of cases, instead of a fixed or inflexible rule of punishment which could not be modified or varied, the court has authority to substitute a milder sentence. Clearly such a statute is not a violation of any right or privilege of an accused party, nor does it render the class of offenses to which it relates, and which were committed prior to its enactment, dispunishable. It does not inflict any greater punishment than was before prescribed; it is not, therefore, *ex post facto*; it only authorizes a mitigation of a penalty; it is therefore an act of clemency which violates no right, but grants a privilege to a convicted party."⁵

§ 253 (144). It has been held that a subsequent act may provide an alternative punishment in mitigation of that previously prescribed without being *ex post facto*.⁶ A statute imposing for an offense the penalty of imprisonment in the house of correction in the county where the offense was committed was held not repealed by a subsequent statute providing that the court in its discretion may commit

ten pounds, or, if the defendant is unable to pay, then whipping; held, that the punishment, after whipping was abolished, was the fine. *State v. Hamblin*, 4 Rich. (N. S.) 1. *Cush.* 237; *Commonwealth v. Gardner*, 11 Gray, 445; *Commonwealth v. McKenney*, 14 id. 1; *Calder v. Bull*, 3 Dall. 386; *Walker v. State*, 7 Tex. App. 245.

⁵ *Dolan v. Thomas*, 12 Allen, 421; *Commonwealth v. Wyman*, 12 *Greer v. State*, 22 Tex. 588. But see *post*, § 671.

⁶ *Turner v. State*, 40 Ala. 21;

the person under sentence to the house of correction in any county in the state in the same manner as he might be to the county where the court is holden, and that all inconsistent statutes are repealed.⁷ The court said: "The change is not in the nature of the penalty or its degree, but only in the locality where it may be inflicted. The essential rights of a person convicted are not materially affected, nor is the punishment aggravated, by an imprisonment in one county rather than another. There would be great force in the argument [that there is an implied repeal] if the new statute had authorized the imprisonment to be inflicted in a penal institution designed or appropriated for the punishment of offenses of a higher or more aggravated nature than those punishable in the house of correction, although the term of imprisonment had remained unchanged. . . . But under the statutes of this commonwealth the several houses of correction in the different counties of the commonwealth are places designated and used for the punishment of offenses of the same grade and degree; they are all subject to the same rule of government; the persons committed to them are under substantially the same discipline, and are entitled to the same rights and privileges. In legal contemplation, a commitment to a house of correction in one county for a specific term cannot be regarded as a higher or lesser punishment than a commitment to a house of correction in another county for the same period of time. The essential elements of the penalty are the same in either case." A change of procedure sometimes has been emphasized as aiding the inference of repeal.⁸ Where a statute prohibited an act under a penalty to be enforced by indictment, and a subsequent statute gave a *qui tam* action for such penalty, the latter was held merely cumulative, and did not repeal the remedy given by the former act.⁹ A statute authorizing the prosecution of all misdemeanors by

⁷ Carter v. Burt, 12 Allen, 424.

Nusser v. Commonwealth, 25 Pa.

⁸ Michell v. Brown, 1 E. & E. 267; St. 126.

⁹ Bush v. Republic, 1 Tex. 455.

information was held to repeal a prior statute which provided that the violation of certain sections against gambling should be prosecuted by indictment.¹⁰ A statute made it a misdemeanor to injure or remove any fence or wall surrounding any yard, garden, field, or pasture. A later statute, making it a misdemeanor to injure or destroy any part of a wire fence situated on the land of another, was held not to repeal the former.¹¹ A law making it unlawful to keep open on Sunday any store, shop, or place for the purpose of trade was held not to repeal a prior law to punish any one who should keep open a saloon on Sunday.¹² An act providing for the deposit in banks of public funds does not repeal or affect the criminal code as to the embezzlement of public money.¹³ An indeterminate sentence act was held not to repeal prior provisions of the code requiring the jury to fix the penalty, but merely to suspend such provisions, and when crimes were excepted from the former act the provisions of the code at once applied.¹⁴ A statute providing that no person indicted for an offense shall be convicted thereof unless by confession of his guilt in open court or by the verdict of a jury accepted and recorded in open court was held not to repeal, by implication, a former statute that judgment may be rendered against the defendant in a criminal case if he fails to plead on the overruling of a demurrer to the indictment or information.¹⁵

§ 254 (145). Statutes granting larger or different power or right.—A new statute which affirmatively grants a larger jurisdiction or power, or right, repeals any prior statute by which a power, jurisdiction or right less ample or absolute had been granted.¹⁶ If the exercise of a power

¹⁰ *Territory v. Cutinola*, 4 N. M. 305, 14 Pac. 809.

¹¹ *State v. Biggers*, 108 N. C. 760, 12 S. E. 1024.

¹² *State v. Binnard*, 21 Wash. 349, 53 Pac. 210.

¹³ *Whitney v. State*, 53 Neb. 287, 72 N. W. 270.

¹⁴ *People v. Murphy*, 202 Ill. 493, 67 N. E. 226.

¹⁵ *State v. Harding*, 20 Wash. 536, 56 Pac. 399, 929.

¹⁶ *Farley v. De Waters*, 2 Daly, 192; *Regina v. Harden*, 2 Ellis & B. 188; *Schneider v. Staples*, 66 Wis. 167, 28 N. W. 145; *Board of Com-*

granted by a legislative act may include going beyond limits fixed by a prior statute, such limitation is impliedly removed, at least so far as it conflicts with the doing of that which is subsequently authorized. Thus, a power given to a municipal corporation to create a debt and provide for its payment empowered it to provide for the payment by taxation according to the exigency of the contract, though taxation for that purpose would exceed a limitation in the general law in force as to the annual rate of taxation.¹⁷ An English statute authorized the removal of poor persons likely to become chargeable. The power was given to two justices, one to be of the *quorum*. A later statute recited that act and repealed the provision for removal on the probability of their becoming chargeable, and enacted that a removal might be made of such persons after they had become chargeable to the parish, by two justices of the peace, without mention of the *quorum*. It was held that the requirement that one of the justices be of the *quorum*, contained in the previous act, was repealed by implication.¹⁸ Where the later statute merely extends the power or right to new subjects, though without mentioning the limitations applicable to the subjects to which the early law referred, they may, by construction, be held to attach to the new subjects, when found consonant to the manifest intention of the legislature, or when such construction accords with its uniform policy.¹⁹ By the Revised Statutes of New York,²⁰ an incorporated academy could take and hold by gift, grant or devise real and personal property, the clear yearly income or revenue of which did not exceed the value of \$4,000.

missioners v. Potts, Sheriff, 10 Ind. 286; Mayor, etc. of Jersey City v. Jersey City, etc. R. R. Co., 20 N. J. Eq. 360; Commissioners of Knox Co. v. McComb, 19 Ohio St. 320; McRoberts v. Washburne, 10 Minn. 28; State v. Burton, 33 Neb. 823, 51 N. W. 140.

¹⁷ Commonwealth v. Commissioners of Allegheny Co., 40 Pa. St. 348.

¹⁸ Regina v. Llangian, 4 B. & S. 249.

¹⁹ Chamberlain v. Chamberlain, 48 N. Y. 424; State v. Tolly, 37 S. C. 551, 16 S. E. 195; Frazier v. Railway Co., 88 Tenn. 138, 12 S. W. 537.

²⁰ 1 R. S. 462, § 42.

By subsequent acts trusts were authorized to be created by grants, devises and bequests of property to any incorporated college or other literary incorporated institution for specific purposes of support of liberal education. By the terms of these acts no limit in amount or value of property which can thus be given in trust is prescribed. The court say: "But these statutes are in no sense repugnant to the general law of the state, limiting and restricting the amount and value of property which can be taken and held by literary and educational corporations, and the general laws are in harmony with the general policy of the state, which has been uniform and consistent so far as such policy is indicated by legislation in relation to gifts in mortmain and the power of corporations to take and hold property. Special trusts were authorized to be created by the acts of 1840 and 1841, in furtherance of the general objects of the institutions named; but such trusts can be created and full effect given to the acts within the limits imposed by the general laws upon the power of the corporations to acquire and hold property. The general laws of restraint and those particular acts permitting special trusts may stand together. . . . There being no express repeal of the general provision of the law, or repudiation of the uniform policy of the state, the intent of the legislature to do either cannot be implied. Unlimited trusts of this character might become an unmitigated evil, and no contingent good could compensate for the actual evil attendant upon withdrawing property from general use and placing it in dead hands. Judges have given the widest possible scope to statutes in restraint of the disposal of property in mortmain, and have been astute in their arguments for the application of such statutes to cases as they arose."²¹ The courts ought not to impute an intent to the legislature not clearly expressed, in direct hostility to the traditions and policy of the past. The institute can 'take and hold' property within the limits prescribed, but can neither take nor hold in excess of

²¹ Per Gibson, Ch. J., *Hillyard v. Miller*, 10 Pa. St. 326.

that limit; effect will not be given to a transgressive bequest in excess of the amount authorized."^{21a}

A local act directed the trustees of a turnpike to keep their accounts and proceedings in books to which all persons should have access. A subsequent general turnpike act recites the importance of a uniform system to be adhered to in the laws relating to turnpikes, and enacted that former laws should continue in force, except as they were thereby varied or repealed; that the trustees should keep their accounts in a book to be open to the inspection of the trustees and creditors of the tolls, and that the book of their proceedings should be open to the inspection of the trustees. It was held that the provision in the local act giving a right of access to all persons was repealed.²² Thus it will be seen that the grant by the legislature of a power or right which is inconsistent with one already possessed will repeal or modify it.²³ It is different and inconsistent when its exercise is made to depend on different conditions, or it is conditioned on different things.²⁴ So, conferring a new right will displace and repeal one previously granted, where their co-existence would be inconvenient, or it otherwise is justly inferable that the legislature intended a repeal.²⁵ It will, however, be deemed cumulative if there are no negative words and no positive repugnance.²⁶

§ 255 (146). **Repeal by radical change of leading part or system.**—An intention to repeal certain statutory provisions may be inferred from radical changes or abolition of the leading parts of the statute to which they were conditions or ancillary.²⁷ The 7 Geo. I., chapter 21, prohibited

^{21a} *Chamberlain v. Chamberlain*, 43 N. Y. 424, 438, 439.

²² *Rex v. Northleach & Witney Road*, 5 B. & Ad. 978.

²³ *Korah v. Ottawa*, 32 Ill. 121, 88 Am. Dec. 255; *Gibbons v. Brittenum*, 56 Miss. 232; *Farley v. De Waters*, 2 Daly, 192.

²⁴ *Gwinner v. Lehigh, etc. R. R. Co.*, 55 Pa. St. 126.

²⁵ *Steward v. Greaves*, 10 M. & W. 711; *O'Flaherty v. McDowell*, 6 H. L. Cas. 142; *Davison v. Farmer*, 6 Ex. 242, 256; *Chapman v. Milvian*, 5 Ex. 61.

²⁶ *Gohen v. Texas Pac. R. R. Co.*, 2 Woods, 346.

²⁷ *Missouri Pac. Ry. Co. v. Park*, 66 Kan. 248, 71 Pac. 586; *State v. Estep*, 66 Kan. 416, 71 Pac. 857.

bottomry loans by Englishmen to foreigners on foreign ships engaged in the Indian trade. This restriction was held silently repealed by the subsequent enactments which put an end to the monopoly of the East India Company and threw its trade open to foreign as well as to British ships.²⁸ An act providing an entirely new system for the compensation of county officers repeals all prior laws on the subject.²⁹ In the case cited the court says: "But if a statute embrace the essential provisions of an antecedent one on the same subject, and formulate a new system, the intention that the new shall be a substitute for the old is manifest, although there be no expressed intention to that effect."

§ 256 (147). **Effect of clause repealing all acts and parts of acts inconsistent with new law.**—Affirmative statutes which contain no reference to existing statutes, either to amend or repeal them, import that the law-maker has no conscious purpose to affect them, unless by congruous addition. On the other hand, when there is inserted in a statute a provision declaring a repeal of all inconsistent acts and parts of acts, there is an assumption that the new rule to some extent is repugnant to some law enacted before. There is a repeal to the extent of any repugnancy in either case, but no farther. The insertion, therefore, of such a general repealing clause adds nothing to the repealing effect of the act.³⁰ But some cases hold that the insertion of such a clause has a restraining effect on the repealing force of the new statute,³¹ and that a new statute intended as a

²⁸ *The India*, Brown & L. 221.

²⁹ *Commonwealth v. Mann*, 168 Pa. St. 290, 31 Atl. 1003; *Commonwealth v. Allegheny County*, 168 Pa. St. 303, 31 Atl. 1061.

³⁰ *Reading v. Shepp*, 2 Pa. Dist. Ct. 137; *North Towanda v. Bradford County*, 2 Pa. Dist. Ct. 517; *State v. Yardley*, 95 Tenn. 546, 32 S. W. 481, 34 L. R. A. 656.

³¹ *Maxwell v. State*, 89 Ala. 150, 7

So. 824; *Birmingham B. & L. Ass'n v. May & T. Hardware Co.*, 99 Ala. 276, 13 So. 612; *Bank of British North Am. v. Cahn*, 79 Cal. 463, 21 Pac. 863; *De Gravelle v. Iberia*, etc. Dr. Dist., 104 La. 703, 29 So. 302; *People v. McAllister*, 10 Utah, 357, 37 Pac. 578; *Pierce v. Commercial Invest. Co.*, 80 Wash. 272, 70 Pac. 496.

substitute or revision of a former one, if it has this general repealing clause, will not repeal the provisions of the former law which are not inconsistent with the new.³² The clause repealing all inconsistent acts and parts of acts has sometimes been classed with express repeals,³³ but it has been held not to be an express repeal within the meaning of a constitutional provision as to repeals.³⁴ It is to be supposed that courts will be less inclined against recognizing repugnancy in applying such statutes, while, in dealing with those of the other class, they will, as principle and authority requires, be astute to find some reasonable mode of reconciling them with prior statutes, so as to avoid a repeal by implication.³⁵ An act in general terms repealing all conflicting provisions of previous acts, it is said, will have the effect to repeal all acts identical with any of those

³² *Johnson v. Southern Mut. B. & L. Ass'n*, 97 Ga. 622, 25 S. E. 358; *People v. Van Pelt*, 180 Mich. 621, 90 N. W. 424; *Barden v. Wells*, 14 Mont. 462, 36 Pac. 1046; *Jobb v. Meagher County*, 20 Mont. 424, 51 Pac. 1034; *State v. Craig*, 22 Ohio C. C. 441; *Hurst v. Samuels*, 29 S. C. 476, 7 S. E. 822; *Co-operative S. & L. Ass'n v. Fawick*, 11 S. D. 89, 79 N. W. 847; *Cosh-Murray Co. v. Tutlich*, 10 Wash. 449, 38 Pac. 1134; *Holden v. Minnesota*, 137 U. S. 483, 11 S. C. Rep. 143, 34 L. Ed. 734. But see *State v. Welbers*, 11 S. D. 86, 75 N. W. 820; *State v. Carron Hill Coal Co.*, 4 Wash. 422, 30 Pac. 728; *post*, §§ 269-271.

³³ *Bish. W. Laws*, § 112a; *State v. Kelley*, 34 N. J. L. 75, 77; *Commonwealth v. Churchill*, 2 Met. 118.

³⁴ *State v. Yardley*, 95 Tenn. 546, 32 S. W. 481, 34 L. R. A. 656. In this case the court says: "The words of the fourth section, 'that

all laws and parts of laws in conflict with this act be, and the same are hereby, repealed,' do not make it an expressly repealing act. Really that section adds nothing of virtue or meaning to the act, and takes nothing from it. All prior conflicting laws and parts of laws were impliedly repealed by the former sections of the act, and, as a consequence, no such laws or parts of laws were left for the fourth section to operate upon. That section was, therefore, useless, and of no force or effect whatever. It had no office to perform and performed none. Its presence in the bill did not make the act a repealing law or a non-repealing law, and it will not be regarded for the purpose of vitiating the law, nor will it be permitted to have that effect."

³⁵ *Rex v. Northleach & Witney Road*, 5 B. & Ad. 978.

expressly repealed.³⁶ But such a clause will not repeal what is merely inconsistent with the void part of the new law.³⁷ The insertion of this clause will not give a general act any additional efficacy to repeal local or special laws.³⁸ A statute providing a remedy for an illegal tax should not be deemed embraced in a general repeal of all laws relating to assessments in an act prescribing and regulating the method of assessing taxes.³⁹ A general clause in an act otherwise unconstitutional, repealing all acts and parts of acts contravening its provisions, will have no effect; for, being void, no acts or parts of acts could contravene its provisions.⁴⁰ Nor will an unconstitutional amendment impliedly repeal the original act by reason of conflict.⁴¹

§ 257. Effect of repeal of statute adopted by reference.—A statute which refers to and adopts the provisions of another statute is not repealed by the subsequent repeal of the original statute adopted, but the provisions adopted continue in force so far as the new statute is concerned, the same as before the repeal.⁴² A statute providing for submitting the question of the removal of a county seat to a popular vote at the April election was held not affected by a statute which discontinued such elections or postponed

³⁶ *State v. Barrow*, 80 La. Ann. Pt. I, 657. In *Mahoney v. Wright*, 10 Irish C. L. (N. S.) 420, Lefroy, C. J., said: "It is settled by authority that the recital of an intention merely, in a subsequent statute, to repeal a former specific statute, will not operate by implication to repeal the former statute, and that, in order to effect such a repeal, there must be a clause of repeal in the repealing statute."

³⁷ *Board of County Com'rs v. First Nat. Bank*, 6 Colo. App. 423, 40 Pac. 894.

³⁸ *Town School Dist. v. School District*, 72 Vt. 451, 48 Atl. 697;

State v. Carson, 6 Wash. 250, 38 Pac. 428. See *post*, §§ 274-278.

³⁹ *Shear v. Commissioners*, 14 Fla. 146.

⁴⁰ *Ante*, § 246.

⁴¹ *Ex parte Davis*, 21 Fed. 396.

⁴² *Phoenix Ass. Co. v. Fire Department*, 117 Ala. 631, 28 So. 848, 42 L. R. A. 468; *Shull v. Barton*, 58 Neb. 741, 79 N. W. 782; *Wick v. Ft. Plain, etc. R. R. Co.*, 27 App. Div. 577, 50 N. Y. S. 479; *People v. Webster*, 8 Misc. 183, 28 N. Y. S. 646; *Sika v. Chicago, etc. R. R. Co.*, 21 Wis. 370; *Schwenke v. Union Depot & R. R. Co.*, 7 Colo. 512, 5 Pac. 816; *Regina v. Stock*, 8 Nev. & Perry, 420.

them until October. These statutes are not laws **on** the same subject. The former should be construed as **fixing** the time for taking the vote, and would not be changed if the April elections for election of officers were abolished.⁴³ The re-enactment of some of the sections of one act, in a subsequent one providing for a different scheme, is not a repeal by implication of these sections in the first act; nor does a provision in the second act suspending the operation of the similar sections in that act have the effect to suspend the operation of those in the first act.⁴⁴

§ 258 (148). **Reconcilement of affirmative statutes — Illustrations.**— The cases are very numerous in which an important question is decided upon the general principle that a statute without negative words will not repeal existing statutes, unless there is an unavoidable repugnancy. A reference to a multitude of such cases has been given in a note to another section.⁴⁵ It is not an exhaustive list, but is full enough for practical purposes. It is now proposed to analyze a few well-considered cases to illustrate the practical operation of the principle requiring the reconcilement, if possible, of statutes, where there is a question of inconsistency between them.

In *McCool v. Smith*⁴⁶ a plaintiff claiming title by descent from an illegitimate child brought ejectment, having, as the law then stood, no title. Pending the action a retrospective amendatory act was passed giving effect to an existing act from an earlier date and thereby covering the date of the descent in question, conferring the right to inherit on such children "the same as if such act had been in force at the time of such death." This amendatory statute was held not to repeal, as to such cases, the common-law rule, and a state statute declaratory of it, requiring a plaintiff to have title at the commencement of his action. The general rule being that repeals by implication are not favored, there will be no such repeal if it be possible to

⁴³ *Cole v. Supervisors*, 11 Iowa, 552.

⁴⁴ *Powers v. Shepard*, 48 N. Y. 540.

⁴⁵ *Ante*, § 239.

⁴⁶ 1 Black, 459, 17 L. Ed. 218.

reconcile the two acts. The court, by Swayne, J., said: "It is *possible* to reconcile the two acts. It may well be that the legislature intended to vest the title retrospectively for the purpose of giving effect to *mesne* conveyances and preventing frauds, without intending also to throw the burden of the costs of an action of ejectment, then pending, upon a defendant who, as the law and facts were at the commencement of the action, must have been the successful party. A stronger case than this must be presented to induce us to sanction such a result by our judgment. If the plaintiff can recover, it must be in an action brought after the 16th of February, 1857. He cannot recover upon a title acquired since the commencement of the suit."

In a curative act it was provided that when an instrument made in good faith and on a valuable consideration, and intended to operate as a conveyance, is placed on record in the county where the lands lie, and the paper has a defect in some statutory requisites in the acknowledgment or certificate of acknowledgment, the record shall operate as legal notice of all the rights secured by the instrument. Six years afterwards the legislature enacted an amendment to the statutes relative to deeds by adding a section prohibiting the recording of such defective conveyances. This was held not a repeal of the curative act. "Repeals by implication," say the court, "are not favored, and there is certainly much room for both of these statutes to operate without conflict. Both are designed to guard and secure rights; not to impair or destroy them. And the grounds of policy for the [curative statute], as one to operate in future, were as evident [when the other was subsequently passed]; and when the legislature required registers to abstain from recording defective papers, they were well aware that such papers after all would sometimes get on record, and that important interests might be sacrificed unless some effect should be given to such records. Accepting this as a true and practical view of the matter, they allowed the [curative act] to remain and endeavored by [the other act] to lessen the occasions for its

application.”⁴⁷ A Mississippi act passed in 1852 appropriated a fund derived from a certain source, then in the state treasury, to the several counties to be expended for a specified purpose. A portion of this appropriated fund was still in the treasury in 1857, and was largely increased by accretions subsequently to the appropriation. The legislature, by an amendment passed the last mentioned year, not referring to the other nor specially to the money appropriated by it, directed a different use of the moneys then in the treasury. It was held possible to reconcile these acts. The portion of the fund which was in the treasury in 1852 was held still appropriated and subject to the act of that year, and that act not repealed; that the subsequent act related only to the residue; that thus the acts could stand together.⁴⁸

§ 259. Repeal by implication — Particular acts construed — Acts relating to the liquor traffic.— Two acts were passed at one session of the legislature; the first one taking effect imposed a license tax, for the state \$300, and for the county \$400, upon every vendor of spirituous, vinous or malt liquors, doing business for one year or less, and provided that any person who should engage in the sale thereof without having paid this tax should, on conviction, be fined in double the amount of the license. The other act was to regulate for police purposes the same traffic; it prescribed a penalty of not less than two hundred nor more than five hundred dollars for clandestine sales. It was held that there was no repeal. The last act was intended to punish for occasional sales of liquor by unauthorized persons having no bar-rooms or regular places of business, and whose sales would be no particular detriment to the revenue; the other act applied to those who engaged in selling as a business.⁴⁹ An act prohibited the sale of liquor in four counties, one of which contained a city of the fourth class. A later law authorized cities of the fourth class to prohibit, license and

⁴⁷ *Brown v. McCormick*, 28 Mich. 215.

⁴⁸ *McAfee v. Southern R. R. Co.*, 36 Miss. 669.

⁴⁹ *Blackwell v. State*, 45 Ark. 50.

regulate the liquor traffic. This was held to repeal the former law as to such city.⁵⁰ A local-option law applicable to part of a county was held to be repealed by a subsequent license law applicable to the whole county.⁵¹ An act prohibiting the sale of liquor within five miles of specified churches was held not to repeal an act granting to a city within the five-mile limit the power to regulate the sale of liquor.⁵² An act similar to the former was held not to be repealed, as to a town within the prescribed limits, by the mere passage of a later act giving such town the power to license such sale; but it was held the prohibitory act would continue in force until the town acted under the power given.⁵³ A statute of Kentucky authorized Hardin county by vote to prohibit the sale of liquor therein. The vote was taken and prohibition adopted. A later act provided that the question should be again submitted to the voters of the county and the vote taken by districts. The old act was held to remain in force until a vote was taken, and after that in such districts as voted for prohibition.⁵⁴ An act which provides for the inspection of liquors is not repealed by an act to regulate their sale.⁵⁵ A law against selling liquor without a license was held not to be repealed by a subsequent act which prohibited the keeping a place where liquors were received or kept for unlawful sale or use, and which also made the sale of such liquors a crime.⁵⁶ A general law imposing a penalty for selling without a license is not repealed or affected by a later act authorizing cities of the third class to license and regulate such sale and to impose a penalty for violating the ordinances passed under

⁵⁰ *Brown v. Commonwealth*, 98 Ky. 652, 34 S. W. 12.

⁵¹ *Yunger v. State*, 78 Md. 574, 28 Atl. 404.

⁵² *Hart v. State*, 88 Ga. 635, 15 S. E. 684.

⁵³ *Gilmore v. State*, 125 Ala. 59, 28 So. 382. To same effect, *State v. Snow*, 117 N. C. 774, 23 S. E. 322;

Tabor v. Lander, 94 Ky. 237, 21 S. W. 1056; *State v. Witter*, 107 N. C. 792, 12 S. E. 328.

⁵⁴ *Kirkpatrick v. Commonwealth*, 95 Ky. 326, 25 S. W. 113.

⁵⁵ *State v. Meek*, 26 Wash. 405, 67 Pac. 76.

⁵⁶ *State v. McCoy*, 86 Minn. 149, 90 N. W. 305.

such power.⁵⁷ A statute making it unlawful for any maker, brewer or distiller of beer or other intoxicating liquor, *or other person or corporation*, to sell or deliver any beer or other intoxicating liquor in the District of Columbia on Sunday, was held not to repeal a prior act which permitted hotel keepers to sell to their guests at their meals or in their rooms on Sunday.⁵⁸ An act imposing a penalty on any minor over sixteen years of age, who, for the purpose of inducing any person to sell or give him liquor, represents to such person that he is twenty-one, was held not to repeal a prior act making it a misdemeanor to sell liquor to minors.⁵⁹

§ 260. **Same—Acts relating to courts, jurisdiction, practice, procedure, etc.**—A subsequent statute which institutes new methods of proceeding does not, without negative words, repeal a former statute relative to procedure.⁶⁰ The statute authorizing a proceeding to contest the validity of a will “by petition to the court of common pleas” does not repeal the provisions of the former statute authorizing a proceeding by bill in chancery.⁶¹ A statute which authorizes a certain oath to be taken before a particular officer is not repealed by a statute which extends the power to administer oaths to a class of officers.⁶² A statute giving a new remedy does not take away a remedy previously existing.⁶³ A statute conferring exclusive jurisdiction of certain cases upon a particular court repeals a law giving the same jurisdiction to another court.⁶⁴ An act requiring motions for new trials to be filed within two days after the

⁵⁷ *State v. Hoeffner*, 9 Wash. 680, 38 Pac. 157. To same effect, *State v. Carter*, 28 S. C. 1, 4 S. E. 790.

⁵⁸ *District of Columbia v. Reuter*, 15 App. Cas. (D. C.) 237.

⁵⁹ *State v. Gulley*, 41 Ore. 318, 70 Pac. 385.

⁶⁰ *Sharp v. Warren*, 6 Price, 131; *Mitchell v. Duncan*, 7 Fla. 18.

⁶¹ *Raudebaugh v. Shelley*, 6 Ohio St. 307.

⁶² *Ruckman v. Ransom*, 35 N. J. L. 565.

⁶³ *Racho v. Detroit*, 90 Mich. 92, 51 N. W. 360; *Brandon v. Carter*, 119 Mo. 572, 24 S. W. 1035, 41 Am. St. Rep. 673; *State v. Martin*, 68 Vt. 93, 34 Atl. 40; *Fisher v. Baldridge*, 91 Tenn. 418, 19 S. W. 227; *Watts v. Wilson*, 93 Ky. 495, 20 S. W. 505.

⁶⁴ *Gassenheimer v. District of Columbia*, 6 App. Cas. (D. C.) 103.

verdict was held not to repeal a prior statute authorizing the court for good cause shown to enlarge the time fixed by statute for doing any act, even after the time has expired.⁶⁵ A statute giving a mode of serving process on corporations does not repeal a prior statute providing a different mode.⁶⁶ A law requiring appeals from county commissioners to be taken within twenty days is repealed by a later law allowing three months for such appeals.⁶⁷ An act that the presiding judge, when interested, may grant a change of venue on his own motion is not repealed by an act providing for a change of venue on petition.⁶⁸ A statute making parties competent witnesses was held not to repeal statutory provisions giving the chancery court power to compel a discovery in suits by judgment creditors.⁶⁹ A provision that violations of the gambling act should be prosecuted by indictment was held to be repealed by a later statute, which authorized all misdemeanors to be prosecuted by information.⁷⁰ A statute authorizing the chancellor to require the complainant to give a bond before appointing a receiver was held to repeal a prior statute which expressly made the requiring of such bond discretionary.⁷¹ An act provided for holding two additional terms of the circuit court of Cedar County, at El Dorado Springs, which was other than the regular place of holding the court, and provided for selecting a court-room, keeping the records, etc. A subsequent general act in regard to the holding of circuit courts provided for two terms in Cedar county at different times than those fixed for the terms at El Dorado Springs. This was held not to repeal the former act.⁷²

⁶⁵ *Leavenworth v. Billings*, 26 Wash. 1, 66 Pac. 107.

⁶⁶ *Lesser Cotton Co. v. Yates*, 69 Ark. 396, 63 S. W. 997; *Congdon v. Butte Consol. Ry. Co.*, 17 Mont. 481, 43 Pac. 629.

⁶⁷ *Baum v. Sweeny*, 5 Wash. 33, 32 Pac. 778.

⁶⁸ *Wallace v. Jameson*, 179 Pa. St. 98, 36 Atl. 142.

⁶⁹ *McCreery v. Cobb*, 93 Mich. 463, 53 N. W. 613.

⁷⁰ *Territory v. Cutinola*, 4 N. M. 305, 14 Pac. 809.

⁷¹ *David v. Levy*, 119 Ala. 241, 24 So. 589.

⁷² *State v. Stratton*, 136 Mo. 423, 33 S. W. 83.

§ 261. Same—Acts relating to officers, their election, appointment, removal, fees, compensation, etc.—A statute providing a new mode of filling an office by election or appointment repeals by implication prior laws fixing a different mode.⁷³ A statute provided for the election by the people of U. of “a street commissioner to superintend the streets, roads and bridges of said city.” This was held to repeal prior laws authorizing the city council to elect ten street commissioners.⁷⁴ An act authorizing the city council by a two-thirds vote to remove any city officer for any offense against the character or duty of his office is not repealed by a subsequent act providing for the removal of public officers by the circuit court because of drunkenness, on complaint of any citizen, nor by an act providing for their impeachment and removal on an accusation by the grand jury.⁷⁵ The acts all being affirmative may be construed together as providing cumulative remedies.

A later act fixing the salary or fees of an officer repeals a prior act fixing a different salary or fees.⁷⁶ A statute fixing the annual salary of a public office at a sum certain, without limitation as to time, is not abrogated or suspended by subsequent enactments which merely appropriate a less amount for the services of that office for particular fiscal years, and which contain no words that expressly or by clear implication modify or repeal the previous law.⁷⁷ A law fixing the fees of an officer for certain services does not repeal a prior

⁷³ *Pavey v. Utter*, 132 Ill. 489, 24 N. E. 77; *State v. Howe*, 28 Neb. 618, 44 N. W. 874; *Browne v. Cumming County*, 31 Neb. 362, 47 N. W. 1050; *Hendrix's Account*, 146 Pa. St. 285, 28 Atl. 435; *Commonwealth v. Taylor*, 159 Pa. St. 451, 28 Atl. 348.

⁷⁴ *Eaton v. Burke*, 66 N. H. 806, 22 Atl. 452.

⁷⁵ *State v. Noblesville*, 157 Ind. 81, 60 N. E. 704.

⁷⁶ *Pierpont v. Crouch*, 10 Cal. 315; *Humer v. Cumberland County*, 4 Pa. Dist. Ct. 588; *Eckerd v. Perry County*, 6 Pa. Dist. Ct. 284; *Price v. Blair County*, 6 Pa. Dist. Ct. 313; *McAllister v. Armstrong County*, 6 Pa. Dist. Ct. 766. See *Leitzel v. Centre County*, 6 Pa. Dist. Ct. 208.

⁷⁷ *United States v. Langston*, 118 U. S. 389, 6 S. C. Rep. 1185, 30 L. Ed. 164.

law fixing his fees for other services.⁷⁸ An act fixed the salary of the supreme court reporter at \$600 a year. A later act of 1891 fixed the salary of the secretary of state at \$2,400 a year and an act of 1893 made the secretary of state *ex officio* supreme court reporter. The later acts were held not to repeal the earlier, and the secretary of state was held entitled to both salaries.⁷⁹ Prior acts gave to county commissioners a *per diem* and mileage. An act of 1890 provided that they should receive five dollars a day for each day employed in the discharge of their duties. It was held that the provision for mileage was repealed.⁸⁰ An act gave to a judge of the supreme court, holding court in any county, "mileage at the rate of twenty cents per mile, in going from his residence to the place where said court is held, and returning therefrom, as his expenses incurred for and on account of travel incurred for the benefit of said county." A later act provided that county officers, jurors, witnesses and all other parties that may be entitled to mileage from the several counties should be entitled to collect mileage at the rate of fifteen cents per mile for the distance actually traveled and no more. This was held not to repeal the former act, as the mileage allowed the judges was intended to cover other expenses than travel.⁸¹ A provision that the compensation of an officer shall not be increased or diminished during the term for which he was elected or appointed is not repealed by an act authorizing an increase in the compensation of aldermen and an ordinance making such increase.⁸² A statute provided that the state should be deemed a party defendant in every suit for divorce, and that the district attorney should be allowed a fee of ten dollars for defending for the state, to be paid by the plaintiff on

⁷⁸ *Randall v. Butler County*, 65 Kan. 20, 68 Pac. 1083.

⁷⁹ *State v. La Grave*, 28 Nev. 373, 48 Pac. 674.

⁸⁰ *State v. Beman*, 15 Wash. 24, 45 Pac. 652.

⁸¹ *Power v. County Com'rs*, 7 Mont. 82, 16 Pac. 658.

⁸² *Council Bluffs v. Waterman*, 86 Iowa, 688, 58 N. W. 289.

commencing the suit. A later act relating to court fees and the fees of other officers provided that the fees specified should be in lieu of all fees which parties had theretofore been required to pay clerks, sheriffs, and all other officials, and that "no other fees than those hereinbefore recited shall hereafter be exacted." District attorneys were not referred to in the act, and it was held not to repeal the provision for his fee in divorce suits.⁸³

§ 262. Same — Acts relating to municipal corporations.— An act to incorporate the city of Pineville repeals by implication the charter of the town of Pineville.⁸⁴ An act which incorporates the territory of four municipalities into one as a city repeals the charters of the separate municipalities.⁸⁵ An act providing for the construction of local improvements by one mode of procedure is not repealed by a later and more comprehensive act providing for their construction by a different mode of procedure.⁸⁶ Two acts were passed at the same session, and by their terms to take effect on the same day; one provided for the organization of towns whenever a majority of the legal voters of any congressional township containing twenty-five legal voters should petition; the other was a provision that no town shall be vacated, nor any town with an area of thirty-six sections or less be divided or have any part stricken therefrom, without first submitting the question to the electors of the town. It was held that they could stand together; the former conferring a power in general terms and the latter imposing a limitation.⁸⁷ An act which gave a remedy for damages by a change of grade was held not to be repealed

⁸³ State v. Moore, 37 Ora. 536, 62 Pac. 26.

⁸⁴ Smith v. Critcher, 92 Ky. 586, 18 S. W. 521.

⁸⁵ South Morgantown v. Morgantown, 49 W. Va. 729, 40 S. E. 15.

⁸⁶ Job v. Alton, 189 Ill. 256, 59 N. E. 622, 82 Am. St. Rep. 448; Hand v. Fellows, 148 Pa. St. 456, 23 Atl.

1126; Hanover Borough's Appeal, 150 Pa. St. 202, 24 Atl. 669; West Chester Alley, 160 Pa. St. 89, 28 Atl. 506; Palo Alto Road, 160 Pa. St. 104, 28 Atl. 649; Beltzhoover Borough v. Beltzhoover's Heirs, 173 Pa. St. 213, 33 Atl. 1047.

⁸⁷ Supervisors v. Board of Commissioners, 12 Minn. 403.

by a later act which provided for local improvements in general and for the assessment of the damages and benefits resulting therefrom.⁸⁸ An act authorizing cities to construct and maintain water-works does not repeal a prior act authorizing the organization of companies to supply municipalities with water.⁸⁹ "An act to revise and amend the tax laws of the city of Louisville," related to the revenue to meet the ordinary expenses of the city. This was held not to repeal provisions of the charter which provided how the city might contract debts beyond the ordinary revenues.⁹⁰ A grant to a city of the power to build bridges was held not to take away the power of the county to build bridges within the city for county purposes.⁹¹

§ 263. Same — Acts relating to taxation, revenue, bonds, assessments, etc.—An act providing a new mode of levying special assessments was held not to repeal a former law on the subject, but to afford a cumulative remedy.⁹² An act exempting school and church property from any and all taxes and assessments is not repealed by a subsequent act providing in a general way for special assessments for local improvements.⁹³ A law imposing a limit of indebtedness upon counties and municipalities is not repealed by a later law which authorizes the incurring of a debt for certain purposes.⁹⁴ A law authorizing counties to issue bonds to the amount of two per cent. of the assessed valuation for various purposes, including the construction and repair of roads and bridges, was held to be repealed as

⁸⁸ *Seaman v. Washington*, 172 Pa. St. 467, 33 Atl. 759; *Bowers v. Braddock*, 172 Pa. St. 596, 33 Atl. 759; *Hopkins v. Braddock*, 172 Pa. St. 605, 34 Atl. 580.

⁸⁹ *White v. Meadville*, 177 Pa. St. 643, 35 Atl. 695, 34 L. R. A. 567.

⁹⁰ *Frantz v. Jacob*, 88 Ky. 525, 11 S. W. 654.

⁹¹ *Skinner v. Henderson*, 26 Fla. 121, 7 So. 464, 8 L. R. A. 55

⁹² *West Chicago Park Com'rs v. Farber*, 171 Ill. 146, 49 N. E. 427; *Greensboro v. McAdoo*, 112 N. C. 359, 17 S. E. 178.

⁹³ *District of Columbia v. Sisters of Visitation*, 15 App. Cas. (D. C.) 300.

⁹⁴ *Beck v. St. Paul*, 87 Minn. 381, 92 N. W. 328.

to the latter purpose by an act authorizing the issue of bonds for such purpose to the amount of one per cent.⁸⁵ An act imposing a privilege tax for state revenue purposes does not repeal a prior act imposing such tax for municipal purposes.⁸⁶ But the contrary is true where an act of the former nature declares that the tax imposed by it shall be in lieu of all other taxes except *ad valorem* taxes.⁸⁷ A law imposed a privilege tax of \$200 a year for each company represented upon the privilege of opening and establishing an insurance office or agency for foreign insurance companies. This was held not to be repealed by a later law imposing a tax of two and one-half per cent. on the gross premium receipts of foreign insurance companies "in lieu of all other taxes."⁸⁸ An act of 1897 forbade the sale of cigarettes. A revenue act of 1899 imposed a privilege tax on the sale of cigarettes, not sold in violation of the criminal law. The latter was held not to repeal the former so as to make the sale of cigarettes legitimate.⁸⁹ A law authorizing counties to levy a tax for the support of the poor was held to be repealed by a subsequent law authorizing counties to levy not exceeding three mills on the dollar for county purposes, the support of the poor being a county purpose.¹ A law providing a new mode of apportioning the state tax repeals the former law on the subject.² A city charter authorized the issue of \$125,000 of bonds for the construction of three certain bridges. A later act authorized the city to issue \$75,000 of bonds for three certain bridges, two of which were the same as two of those specified in the charter. The later act was held not to repeal the former, but to be cumulative, and it was held the city could issue \$200,000 of bonds for

⁸⁵ *Murphy v. County Com'rs*, 78 Minn. 28, 76 N. W. 951.

⁸⁶ *Burke v. Memphis*, 94 Tenn. 692, 30 S. W. 742.

⁸⁷ *Memphis v. Am. Express Co.*, 102 Tenn. 886, 52 S. W. 172.

⁸⁸ *Memphis v. Carrington*, 91 Tenn. 511, 19 S. W. 673.

⁸⁹ *Blaufield v. State*, 103 Tenn. 593, 53 S. W. 1090.

¹ *Oregon Short Line v. Standing*, 10 Utah, 452, 37 Pac. 687.

² *State v. Linn County*, 25 Ore. 503, 36 Pac. 297.

the purposes specified.³ A later law providing for the same tax as a former law repeals the latter.⁴ An act requiring county auditors to publish a list of lands sold for taxes, and unredeemed, was held to be repealed by a later law requiring notice of the expiration of the period of redemption to be given to the party in whose name the land was assessed.⁵

§ 264. Same — Acts relating to married women.— The statutes giving married women capacity of suing and being sued without the husband being joined repeal by implication the statutes which suspend the statute of limitations for coverture as a disability.⁶

In *Emerson v. Clayton*⁷ the court say: "By this statute a married woman must, since its enactment, be considered a *feme sole* in regard to her estate of every sort owned by her before marriage, or which she may acquire during coverture, in good faith, from any person not her husband, by descent, devise or otherwise, together with the rents, issues, increase and profits thereof. . . . They designed to make and did make a radical and thorough change in the condition of a *feme covert*. She is *unmarried*, so far as her property is concerned, and can deal with it as she pleases."

Though such acts do not purport to repeal the exemption of married women from the operation of limitation laws, they manifestly produce that result by a reasonable con-

³ *Tillotson v. Saginaw*, 94 Mich. 240, 54 N. W. 162.

⁴ *Commissioner of Sinking Fund v. Grainger*, 98 Ky. 319, 82 S. W. 954.

⁵ *Beumer v. Woll*, 86 Minn. 294, 90 N. W. 530; *Kenaston v. Great Northern Ry. Co.*, 59 Minn. 85, 60 N. W. 813.

⁶ *Hayward v. Gunn*, 82 Ill. 385; *Castner v. Walrod*, 83 id. 171; *Enos v. Buckley*, 94 id. 458; *Geisen v. Heiderich*, 104 id. 537; *Brown v. Cousens*, 51 Me. 801; *Cameron v.*

Smith, 50 Cal. 303; *Ong v. Sumner*, 1 Cincin. Sup. Ct. 424; *Ball v. Bullard*, 52 Barb. 141; *Hick's Estate*, 7 Pa. Supr. Ct. 274. The exemption of married women in New York from the operation of the statute was re-enacted in the code after the passage of the act enabling married women to sue. See *Clark v. McCann*, 18 Hun, 13; *Dunham v. Sage*, 52 N. Y. 229; *Acker v. Acker*, 81 id. 143; *Clarke v. Gibbons*, 83 id. 107.

⁷ 82 Ill. 493.

struction of the language used in connection with the scope, purpose and object of the statute.⁸

By statute as well as by the common law in Indiana prior to 1881 a husband and wife, upon a deed made to both, became neither joint tenants nor tenants in common, but were seized of the entirety, so that on the death of either the survivor took the whole; and during their lives neither could convey without the consent of the other, nor could any part of the land be taken on execution for the separate debt of either. This doctrine was not abolished or repealed by implication by the act passed in 1881, providing that "A married woman may take, acquire and hold property, real or personal, by conveyance, gift, devise or descent, or by purchase with her separate means or money; and the same, together with the rents, issues, income and profits thereof, shall be and remain her own separate property, and under her own control, the same as if she were unmarried." It was held that these laws could stand together. A married woman may well have all the personal rights conferred by the act of 1881 as to her separate property, without any interference or collision with the statutes as to entreties. When husband and wife take by entreties neither of them holds any of the property separately.⁹

A statute of Oregon of 1853 provided that the will of an unmarried woman should be deemed to be revoked by her subsequent marriage. It was held that this was not repealed by a later law providing that a written will could only be revoked by another written will, or unless canceled and destroyed by the testator himself or by someone in his

⁸Castner v. Walrod, 83 Ill. 171; Kibbe v. Ditto, 93 U. S. 674, 23 L. Ed. 1005. See Hershy v. Latham, 42 Ark. 305; State v. Troutman, 72 N. C. 551; Briggs v. Smith, 83 id. 306.

⁹Carver v. Smith, 90 Ind. 222, 46 Am. Rep. 210. An act provided for extending the regular term of

the court so long as might be necessary to finish the business pending therein; held not repealed by a later act containing the same provision, with some unimportant additions as to matters of detail, and a further provision authorizing special terms also. Cordell v. State, 22 Ind. 1.

presence and by his direction, as this had reference only to a revocation by some direct, affirmative act; nor by an act removing the disabilities of married women and vesting them with the complete control of their property, as if unmarried; nor by an act repealing all laws imposing civil disabilities upon the wife which were not imposed upon the husband.¹⁰ A statute limiting the husband's liability for the ante-nuptial debts and torts of the wife to the property acquired by him from his wife, in connection with a statute making the wife a *feme sole* so far as to enable her to carry on business on her own account, with the necessary right to contract and be contracted with, to sue and be sued, was held not to repeal the common-law rule that the husband must be joined in a suit for a tort of the wife.¹¹

A statute which denied to a married female the right to dispose of land by will is not impliedly repealed by a subsequent statute which made it lawful for her to receive by gift, grant, devise or bequest, and to hold to her sole and separate use as if she were a single female, real and personal property, and the rents, issues and profits thereof, and assuring the same against her husband's disposal and his debts. The language of the statute gave her only the right to receive and hold — a mere *jus tenendi*, not *disponendi*.¹² The common law and statutory estate by the curtesy is held abolished by the statutes which assure to married women the possession and control of their separate property with the rents, issues and profits, and confer power of disposition by deed or will.¹³ A statute that married women and minors may, in their own right, make and draw deposits, and draw dividends, and give valid receipts therefor, was held not to be repealed by a later provision that all property ac-

¹⁰ Booth's Will, 40 Ore. 154, 61 Pac. 1181, 66 Pac. 710.

¹¹ Taylor v. Pullen, 152 Mo. 484, 53 S. W. 1086.

¹² Naylor v. Field, 29 N. J. L. 287.

¹³ Tong v. Marvin, 15 Mich. 60; Billings v. Baker, 28 Barb. 343. And see Hurt v. Cook, 151 Mo. 416, 52 S. W. 396.

quired after marriage by either husband or wife, with certain exceptions, should be community property.¹⁴

§ 265. Same—Acts relating to the limitation of actions.—Three successive acts of limitation were passed; each provided a bar to an action of *assumpsit* if not commenced within six years after the cause of action accrued. The second in terms repealed the first. The third was put in force without any repealing clause. A right of action run three years under the first, and three years under the second, and the action was brought after the third had been enacted; it was held that the action was barred. There was no repeal, for the acts were not inconsistent.¹⁵ An act of 1713 provided that when a judgment for the plaintiff was reversed on error or when judgment was given against the plaintiff on motion in arrest of judgment, he or his representatives might commence a new action at any time within a year from such reversal or arrest. An act of 1895 provided that an action for wrongful injury to the person should be brought within two years from the injury, and not afterwards. This was held to repeal the earlier act so far as such actions were concerned.¹⁶ Such a statute would repeal a prior law allowing six years for the commencing of such action.¹⁷

§ 266. Same—Miscellaneous cases.—A road law which only goes into effect in any county on the recommendation of the grand jury is not repealed by a later law providing a different scheme, and which only goes into effect on adoption by popular vote.¹⁸ A law providing how warrants on the county treasurer should be drawn, and providing that no money should be paid out except upon warrants so drawn, was held not to be repealed by a later law, allowing jurors

¹⁴ *Rowe v. Hibernia Sav. & L. Co.*, 190 Pa. St. 358, 42 Atl. 953. To same effect, *Voight v. Gulf, etc. Ry. Soc.*, 134 Cal. 403, 66 Pac. 569.

¹⁵ *McLaughlin v. Hoover*, 1 Ore. 81. *Co.*, 94 Tex. 857, 60 S. W. 658.

¹⁶ *Speer v. Boggs*, 204 Pa. St. 504, 54 Atl. 346.

¹⁸ *McGinnis v. Ragsdale*, 116 Ga. 245, 42 S. E. 492.

¹⁷ *Rodenbaugh v. Phila. Traction*

attending an inquest \$1 a day, to be paid out of the county treasury on the certificate of the coroner, as both acts could apply.¹⁹ The repealing effect of an act cannot be enlarged by its title.²⁰ A provision requiring the supreme court reporter to have all decisions in the hands of the publisher, if enough for a volume, within twenty days after their rendition, on penalty of removal from office, was held to be repealed by implication by a later law requiring all decisions to be reported, as compliance with both laws would be impossible.²¹ A primary election law was held to repeal the provisions of a general election law relating to nominations by party conventions.²² An act to provide for the organization of mutual insurance companies was held not to repeal so much of a prior act for the organization of insurance companies of various kinds as related to mutual companies.²³ An act provided that every franchise or privilege to construct or operate a railroad upon any public street or highway should be granted to the highest bidder. An act going into effect one day later authorized county boards to grant franchises for all lawful purposes "upon such terms, conditions and restrictions as in their judgment may be necessary and proper." This was held not to repeal the former act as to railroad franchises granted by county boards, as there was room for both acts to operate.²⁴ An act granted to the defendant company certain franchises in New York City and required it to pay certain license fees to the city. A later act granted additional privileges and provided that, if the same were accepted, it should pay a percentage on net receipts to the city. There was held to be no repeal, the payment provided for in the later statute not being exclusive.²⁵ The grant to a telephone company to use the streets

¹⁹ Kern v. People, 44 Ill. App. 181.

²³ State v. Moore, 48 Neb. 870, 67

²⁰ The New York, 108 Fed. 102, 47 N. W. 876.

C. C. A. 282.

²⁴ Thompson v. Board of Supervisors, 111 Cal. 558, 44 Pac. 280.

²¹ State Reporter's Case, 150 Pa. St. 550, 24 Atl. 908.

²⁵ New York v. Dry Dock, etc. R.

²² State v. Jensen, 86 Minn. 19, 89 N. W. 1126.

R. Co., 47 Hun, 199.

is not repealed by a later grant to an electric street railway company to use the same streets.²⁶ In 1884 the legislature of Kentucky passed an act to encourage railroad building, which provided that all railroads thereafter built should be exempt from all taxation for five years after the commencement of the road. In 1886 a general revenue act was passed which provided for the taxation of all property not expressly exempted by the act and which repealed all acts, general and special, and parts of acts, inconsistent therewith. It was held to repeal the earlier act by implication as to roads thereafter commenced. In 1888 the laws of the state were compiled and both the above acts were included therein and re-enacted. This was held not to change the result.²⁷ An act gave power to the railroad and warehouse commissioners to revoke warehouse licenses, but no provision was then in existence for licensing warehouses. A later act authorized the circuit court to grant and revoke licenses to certain warehouses. The former act was held to be repealed or suspended as to such licenses.²⁸ Some additional cases are referred to in the margin.²⁹

§ 267. Repeals by implication avoided if possible.—If two statutes can be read together without contradiction, or repugnancy, or absurdity, or unreasonableness, they should

²⁶ *Cumberland Tel. & Tel. Co. v. United Electric Ry. Co.*, 93 Tenn. 492, 29 S. W. 104, 27 L. R. A. 236.

²⁷ *Commonwealth v. Railroad Companies*, 95 Ky. 60, 23 S. W. 868.

²⁸ *Cantrell v. Seaverns*, 168 Ill. 165, 48 N. E. 186.

²⁹ Held repeal by implication: *Edwards v. D. & R. G. R. R. Co.*, 13 Colo. 59, 21 Pac. 1011; *Smith v. Chicago, etc. Ry. Co.*, 86 Iowa, 202, 53 N. W. 128; *State v. Rogers*, 22 Ore. 348, 30 Pac. 74; *Sproul v. Standard Plate Glass Co.*, 201 Pa. St. 103, 50 Atl. 1003; *Norfor v. Busby*, 19

Wash. 450, 53 Pac. 715; *Stetson-Post Mill Co. v. Brown*, 21 Wash. 619, 59 Pac. 507, 75 Am. St. Rep. 862. Held no repeal: *Hewitt v. People*, 87 Ill. App. 367; S. C. affirmed, 186 Ill. 336, 57 N. E. 1077; *Jarvis v. Bradford*, 88 Ill. App. 685; *Chicago v. Hanseddy*, 103 Ill. App. 1; *Negrotts v. Monett*, 49 Mo. App. 286; *Walcott Tp. v. Skauge*, 6 N. D. 382, 71 N. W. 544; *Northwestern Mut. Life Ins. Co. v. Lewis & Clark County*, 28 Mont. 484; *Reynolds v. Board of Education*, 66 Kan. 672, 72 Pac. 274; *Snowden v. State*, 69 Md. 202, 14 Atl. 528.

be read together, and both will have effect.³⁰ It is not enough to justify the inference of repeal that the later law is different; it must be contrary to the prior law.³¹ It is not sufficient that the subsequent statute covers some or even all the cases provided for by the former, for it may be merely affirmative, accumulative or auxiliary; there must be positive repugnancy; and even then the old law is repealed by implication only to the extent of the repugnancy.³² If, by fair and reasonable interpretation, acts which are seemingly incompatible or contradictory may be enforced and made to operate in harmony and without absurdity, both will be upheld, and the later one will not be regarded as repealing the others by construction or intendment.³³ As laws are presumed to be passed with deliberation and with a full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable.³⁴ In the endeavor

³⁰ *Regina v. Mews*, 6 Q. B. Div. 47; *S. C.*, L. R. 8 App. Cas. 339, reversing the ruling below; *Smith v. Speed*, 50 Ala. 276; *Enloe v. Reike*, 56 id. 500; *Wagner v. Stoll*, 2 Rich. (N. S.) 539; *Robb v. Gurney*, id. 559.

³¹ *Nixon v. Piffet*, 16 La. Ann. 379; *Kesler v. Smith*, 66 N. C. 154; *Landis v. Landis*, 39 N. J. L. 274.

³² *Wood v. United States*, 16 Pet. 342, 863, 10 L. Ed. 987; *Coats v. Hill*, 41 Ark. 149; *Connors v. Carp River Iron Co.*, 54 Mich. 168, 19 N. W. 938; *People v. Supervisors*, 67 N. Y. 109, 23 Am. Rep. 94.

³³ *Elizabethtown, etc. R. R. Co. v. Elizabethtown*, 12 Bush, 233; *Higgins v. State*, 64 Md. 419, 423, 1 Atl. 876; *McCool v. Smith*, 1 Black, 459, 17 L. Ed. 218; *Cass v. Dillon*, 2 Ohio St. 607; *Howard Association's Ap-*

peal, 70 Pa. St. 344; *Kansas City v. Kimball*, 60 Kan. 224, 56 Pac. 78; *Conley v. Commonwealth*, 98 Ky. 125, 32 S. W. 285; *Albert v. Twohig*, 35 Neb. 563, 53 N. W. 582; *Co-operative S. & L. Ass'n v. Fawick*, 11 S. D. 589, 79 N. W. 847; *Groff v. Miller*, 20 App. Cas. (D. C.) 353; *Farwell v. Des Moines Brick & Mfg. Co.*, 97 Iowa, 286, 66 N. W. 176, 35 L. R. A. 63; *George v. Lillard*, 106 Ky. 820, 51 S. W. 793; *Gowen v. Conlow*, 51 Minn. 213, 53 N. W. 365; *State v. Smith*, 35 Neb. 13, 52 N. W. 700; *State v. Hay*, 45 Neb. 821, 63 N. W. 821; *Williams v. McLendon*, 44 S. C. 174, 21 S. E. 616; *Appleton W. W. Co. v. Appleton*, 116 Wis. 363, 93 N. W. 262.

³⁴ *Jobb v. Meagher County* 20 Mont. 424, 51 Pac. 1034; *Ridgeway*

to harmonize statutes seemingly incompatible, to avoid repeal by implication, a court will reject absurdity as not enacted, and accept with favorable consideration what is reasonable and convenient. In cases of doubt, repeal of a statute or of the common law may be deemed intended in favor of convenience.³⁵ An argument based on inconvenience is forcible in law;³⁶ no less so is one to avoid what is unjust or unreasonable.³⁷ Like considerations of what is convenient, just or reasonable, when they can be invoked against the implication of repeal, will be still more potent. The act being silent as to repeal and affirmative, it will not be held to abrogate any prior law which can reasonably and justly operate without antagonism.³⁸ A statute which does not take away any right, or impose any substantially new duty, but regulates with additional requirements a duty imposed by a previous statute, is not to be deemed inconsistent with the previous act.³⁹ Two statutes are not repugnant to each other unless they relate to the same subject and are passed for the same purpose.⁴⁰ "It is a reasonable presumption that all laws are passed with a knowledge of those already existing, and that the legislature does not intend to repeal a statute without so declaring."⁴¹

v. Gallatin County, 181 Ill. 521, 55 N. E. 146; *Bowen v. Lease*, 5 Hill, 221, 226.

³⁵ *Steward v. Greaves*, 10 M. & W. 711; *Davison v. Farmer*, 6 Ex. 242, 256.

³⁶ *Co. Litt.* 97*a*.

³⁷ *Rex v. Whiteley*, 8 H. & N. 143; *Johnson v. Bush*, 8 Barb. Ch. 207, 238. See *Harris v. Jenna*, 9 C. B. (N. S.) 152.

³⁸ *Ante*, § 248; *McNeely v. Woodruff*, 13 N. J. L. 852, 856, 857; *Evergreens, Matter of*, 47 N. Y. 216, 221; *Chamberlain v. Chamberlain*, 48 id. 424, 438; *State v. Stinson*, 17 Me. 154; *Smith v. People*, 47 N. Y. 330;

Commercial Bank v. Chambers, 8 S. & M. 9, 46.

³⁹ *Staats v. Hudson River R. R. Co.*, 4 Abb. App. Dec. 287.

⁴⁰ *People v. Bartleson*, 14 Utah, 258, 47 Pac. 87.

⁴¹ *Booth's Will*, 40 Ore. 154, 61 Pac. 1135, 66 Pac. 710. In *Speer v. Boggs*, 204 Pa. St. 504, the court says: "When an apparent conflict is presented by different parts of the same act, it is the duty of courts to reconcile them, if possible, by such construction as will give effect to all the parts. The presumption is that the legislature did not intend any inconsistency."

§ 268 (153). Acts passed at same session — Provisions in same act.— The presumption is stronger against implied repeals where provisions supposed to conflict are in the same act or were passed at nearly the same time. In the first case it would manifestly be an inadvertence, for it is not supposable that the legislature would deliberately pass an act with conflicting intentions; in the other case the presumption rests on the improbability of a change of intention, or, if such change had occurred, that the legislature would express it in a different act without an express repeal of the first.⁴² “Statutes enacted at the same session of the legislature should receive a construction, if possible, which will give effect to each. They are within the reason of the rule governing the construction of statutes *in pari materia*. Each is supposed to speak the mind of the same legislature, and the words used in each should be qualified and restricted, if necessary, in their construction and effect, so as to give validity and effect to every other act passed at the same session.”⁴³ The presumption is that different acts passed at the same session of the legislature are imbued by the same spirit and actuated by the same policy, and that one was not intended to repeal or destroy another, unless so expressed.⁴⁴ Where two acts are passed or go into effect on

But when there is a conflict between a prior and a subsequent act, the presumption is that the latter repeals the former. The courts are not bound, nor even authorized, to seek a construction that will reconcile them, further than to inquire if the conflict is real and not merely apparent. If it is real, the result is the repeal of the prior act.” p. 508.

⁴² Houston, etc. R. R. Co. v. Ford, 53 Tex. 364, 2 Am. & Eng. R. R. Cas. 514; Eckloff v. Dist. of Columbia, 4 Mackay, 572; Peyton v. Moseley, 3 T. B. Mon. 77; Gibbons

v. Brittenum, 56 Miss. 232; State ex rel. Kellogg v. Treasurer, 41 Mo. 16; State v. Clark, 54 id. 216; Nazareth L. B. L. v. Commonwealth, 14 B. Mon. 266; State v. Rackley, 2 Blackf. 249; Smith v. People, 47 N. Y. 330; Dawson v. Horan, 51 Barb. 459; Sanders v. State, 77 Ind. 227; Beals v. Hale, 4 How. 87; Supervisors v. Board of Commissioners, 12 Minn. 403.

⁴³ White v. Meadville, 177 Pa. St. 643, 85 Atl. 695, 84 L. R. A. 567.

⁴⁴ Banks v. Yolo County, 104 Cal. 258, 37 Pac. 900; Hutchinson v. Self, 153 Ill. 542, 89 N. E. 27; State v.

the same day it is strong evidence that they were intended to stand together.⁴⁵ So where the later law was the first to be introduced.⁴⁶ An amendment of a law shows that the legislature did not intend to repeal it by a prior law.⁴⁷ At the same session of the legislature two acts were passed relative to the place where actions against corporations might be brought. The act first passed provided that such actions might be brought in any county where the cause of action or a part thereof accrued, or in any county where the corporation had an agency or representative or in which was its principal office. The second act gave a right in terms to bring an action in any county in which the cause of action or a part thereof arose — it contained no repealing clause. It was held not to repeal the former.⁴⁸

The different sections or provisions of the same statute or code should be so construed as to harmonize and give effect to each,⁴⁹ but, if there is an irreconcilable conflict, the later in position prevails.⁵⁰ But where an act divided the territory of Colorado into seventeen counties and defined the boundaries of each in separate sections, and there was a conflict in the descriptions, it was held that the descriptions

Archibald, 43 Minn. 328, 45 N. W. 606; Hawes v. Fliegler, 87 Minn. 819, 92 N. W. 223; State v. Stratton, 136 Mo. 423, 88 S. W. 83; State v. Rotwitt, 17 Mont. 41, 41 Pac. 1004; Houston & Tex. Cent. Ry. Co. v. State, 95 Tex. 507, 62 S. W. 114; Matter of Gannett, 11 Utah, 283, 39 Pac. 496; Town School District v. School District, 72 Vt. 451, 48 Atl. 697; In re Wilbur's Estate, 14 Wash. 242, 44 Pac. 262; Walser v. Jordan, 124 N. C. 683, 33 S. E. 139.

⁴⁵ Commonwealth v. Huntley, 156 Mass. 286, 30 N. E. 1127, 15 L. R. A. 839; Solomon v. Denver, 12 Colo. App. 179, 55 Pac. 199; Territory v. Wingfield, 2 Ariz. 305, 15 Pac. 189.

⁴⁶ Lien v. County Com'rs, 80 Minn. 58, 82 N. W. 1094.

⁴⁷ People v. Butler St. Foundry & Iron Co., 201 Ill. 236, 66 N. E. 349.

⁴⁸ Houston, etc. R. R. Co. v. Ford, 58 Tex. 864.

⁴⁹ Groff v. Miller, 20 App. Cas. (D. C.) 353; Smith v. School Com'rs, 81 Md. 513, 82 Atl. 193; Westport v. Jackson, 69 Mo. App. 148; Cincinnati v. Connor, 55 Ohio St. 82, 44 N. E. 582; Bull v. Kirk, 37 S. C. 395, 16 S. E. 151.

⁵⁰ Ex parte Thomas, 113 Ala. 1, 21 So. 369; Hand v. Stapleton, 135 Ala. 156, 33 So. 689; Van Horn v. State, 46 Neb. 62, 64 N. W. 365; Omaha Real Est. & T. Co. v. Kragcow, 47 Neb. 592, 66 N. W. 658.

were in the nature of grants and that the earlier sections were to be first satisfied.⁵¹ Where a statute expresses first a general intent, and afterwards an inconsistent particular intent, the latter will be taken as an exception from the former and both will stand.⁵²

§ 269 (154). **Repeal by revision.**—Revision of statutes implies a re-examination of them. The word is applied to a restatement of the law in a corrected or improved form. The restatement may be with or without material change. A revision is intended to take the place of the law as previously formulated. By adopting it the legislature say the same thing, in effect, as when a particular section is amended by the words “so as to read as follows.” The revision is a substitute; it displaces and repeals the former law as it stood relating to the subjects within its purview. Whatever of the old law is restated in the revision is continued in operation as it may operate in the connection in which it is re-enacted.

In *Bartlet v. King*,⁵³ Dewey, J., said: “A subsequent statute revising the whole subject-matter of a former one, and evidently intended as a substitute for it, although it contains no express words to that effect, must on principles of law, as well as in reason and common sense, operate to repeal the former.”⁵⁴

Though a subsequent statute be not repugnant in all its provisions to a former, yet if it was clearly intended to prescribe the only rule which should govern, it repeals the for-

⁵¹ *Link v. Jones*, 15 Colo. App. 281, 62 Pac. 839.

⁵³ 12 Mass. 545.

⁵² *Stockett v. Bird*, 18 Md. 484; *De Winton v. Mayor*, 26 Beav. 533; *Dahnke v. People*, 168 Ill. 102, 48 N. E. 137, 39 L. R. A. 197; *Ex parte Joffe*, 46 Mo. App. 260; *Rodgers v. United States*, 185 U. S. 83, 22 S. C. Rep. 582, 46 L. Ed. 816; *In re Rouse Hazard & Co.*, 91 Fed. 96, 33 C. C. A. 356.

⁵⁴ *Rogers v. Watrous*, 8 Tex. 62, 68 Am. Dec. 100; *King v. Cornell*, 106 U. S. 395, 1 S. C. Rep. 812, 27 L. Ed. 60; *Excelsior Petroleum Co. v. Embury*, 67 Barb. 261; *Ellis v. Paige*, 1 Pick. 45; *Berkshire v. Miss. etc. Ry. Co.*, 28 Mo. App. 225; *Lyon v. Smith*, 11 Barb. 124; *Smith v. Nobles Co.*, 87 Minn. 535, 35 N. W. 383.

mer statute.⁵⁵ Without express words of repeal a previous statute will be held to be modified by a subsequent one, if the latter was plainly intended to cover the subject embraced by both, and to prescribe the only rules in respect to that subject that are to govern.⁵⁶ Where a provision is amended by the form, "to read as follows," the intention is manifest to make the provision following a substitute for the old provision and to operate exclusively in its place.⁵⁷ Does a revision import that it shall displace the last previous form; that it is evidently intended as a substitute for it; that it is intended to prescribe the only rule to govern? In other words, will a revision repeal by implication previous statutes on the same subject, though there be no repug-

⁵⁵ *Rogers v. Watrous*, 8 Tex. 62, 63 Am. Dec. 100; *Industrial School District v. Whitehead*, 13 N. J. Eq. 290; *Bryan v. Sundberg*, 5 Tex. 418; *Mulligan v. Cavanagh*, 46 N. J. L. 45, 49; *Murdock v. Memphis*, 20 Wall. 617, 22 L. Ed. 429; *State v. Stoll*, 17 Wall. 425, 21 L. Ed. 650; *United States v. Tynen*, 11 Wall. 88, 20 L. Ed. 153; *Board of Commissioners v. Potts*, 10 Ind. 286; *State v. Wilson*, 43 N. H. 419, 82 Am. Dec. 163; *Water Works Co. v. Burkhart*, 41 Ind. 864; *Farr v. Brackett*, 30 Vt. 344; *Tracy v. Tuffly*, 134 U. S. 206, 10 S. C. Rep. 527, 33 L. Ed. 879; *Giddings v. Cox*, 31 Vt. 607; *State v. Kelley*, 34 N. J. L. 75; *Pingree v. Snell*, 42 Me. 53; *Fayette County v. Faires*, 44 Tex. 514; *Sacramento v. Bird*, 15 Cal. 294; *State v. Conkling*, 19 Cal. 501; *Dexter & Limerick P. R. Co. v. Allen*, 16 Barb. 15; *Bracken v. Smith*, 39 N. J. Eq. 169; *Andrews v. People*, 73 Ill. 605; *Daviess v. Fairbairn*, 3 How. 636, 11 L. Ed. 760; *Red Rock v. Henry*, 106 U. S.

596, 1 S. C. Rep. 434, 27 L. Ed. 251; *People v. Brooklyn*, 69 N. Y. 605; *Cook County Nat. Bank v. United States*, 107 U. S. 445, 2 S. C. Rep. 445, 27 L. Ed. 537; *Dillon v. Bicknell*, 116 Cal. 111, 47 Pac. 937; *Callam v. District of Columbia*, 16 App. Cas. (D. C.) 271; *Lambkin v. Pike*, 115 Ga. 827, 42 S. E. 213, 90 Am. St. Rep. 153; *Monroe County v. McDaniel*, 68 Miss. 203, 8 So. 645; *State v. Order of Elks*, 69 Miss. 895, 18 So. 255; *State Revenue Agent v. Hill*, 70 Miss. 106, 11 So. 789; *School District v. Eckert*, 84 Miss. 417, 87 N. W. 1019; *State v. Camden*, 58 N. J. L. 515, 33 Atl. 846; *Camden v. Varney*, 63 N. J. L. 325, 43 Atl. 889.

⁵⁶ *Tracy v. Tuffly*, 134 U. S. 206, 10 S. C. Rep. 527, 33 L. Ed. 879.

⁵⁷ *United States v. Barr*, 4 Sawy. 254, Fed. Cas. No. 14,527; *United States v. Tynen*, 11 Wall. 95, 20 L. Ed. 153; *Knox v. Baldwin*, 80 N. Y. 610; *Goodno v. Oshkosh*, 31 Wis. 127; *State v. Ingersoll*, 17 id. 631; *State v. Beswick*, 13 R. I. 211; *ante*, § 237.

nance? The authorities seem to answer emphatically, Yes. The reasonable inference from a revision is that the legislature cannot be supposed to have intended that there should be two distinct enactments embracing the same subject-matter in force at the same time, and that the new statute, being the most recent expression of the legislative will, must be deemed a substitute for previous enactments, and the only one which is to be regarded as having the force of law.⁵⁸ In case of an act "to revise, amend and

⁵⁸Smith v. State, 1 Stew. 506; State v. Whitworth, 8 Port. 484; Wilkinson v. Ketler, 59 Ala. 306; Ogbourne v. Ogbourne's Adm'r, 60 Ala. 616; Hatchett v. Billingslea, 65 Ala. 16; Carmichael v. Hays, 66 Ala. 543; Scott v. Simons, 70 Ala. 352; Sawyers v. Baker, 72 Ala. 49; Werborn v. Austin, 77 Ala. 381; Wood v. State, 47 Ark. 488, 1 S. W. 709; Wilson v. Massie, 70 Ark. 25, 65 S. W. 942; Inman v. State, 65 Ark. 508, 47 S. W. 558; Hanley v. Sixteen Horses, 97 Cal. 182, 32 Pac. 10; Huffman v. Hall, 102 Cal. 26, 36 Pac. 417; San Diego County v. Southern Pac. R. R. Co., 108 Cal. 46, 40 Pac. 1052; Dillon v. Bicknell, 116 Cal. 111, 47 Pac. 937; Mack v. Jastro, 126 Cal. 130, 58 Pac. 872; People v. Ames, 27 Colo. 126, 60 Pac. 346; Husbands v. Talley, 8 Penn. (Del.) 88, 47 Atl. 1009; Fulton v. District of Columbia, 2 App. Cas. (D. C.) 431; Callan v. District of Columbia, 16 App. Cas. (D. C.) 271; United States v. MacFarland, 18 App. Cas. (D. C.) 120; Jernigan v. Holden, 34 Fla. 530, 16 So. 413; Culver v. Third Nat. Bank, 64 Ill. 528; People v. Board of Education, 166 Ill. 388, 46 N. E. 1099; Canal Com'rs v. East Peoria, 179 Ill. 214, 53 N. E. 633; People v. Thornton, 186 Ill. 162, 57 N. E. 841; State Board of Health v. Ross, 191 Ill. 87, 60 N. E. 811; Washington Heights v. Moffatt, 57 Ill. App. 269; State Board of Health v. Ross, 91 Ill. App. 281; Keep v. Crawford, 92 Ill. App. 587; Lawson v. De Bolt, 78 Ind. 563; Thomas v. Butler, 139 Ind. 245, 38 N. E. 808; Warford v. Sullivan, 147 Ind. 14, 46 N. E. 27; State v. Studt, 31 Kan. 245, 1 Pac. 635; State v. Countryman, 57 Kan. 815, 48 Pac. 187; Gorham v. Luckett, 6 B. Mon. 154; Broaddus v. Broaddus, 10 Bush, 299; Commonwealth v. Mason, 82 Ky. 256; Commonwealth v. Watts, 84 Ky. 537, 2 S. W. 123; Smith v. Mattingly, 96 Ky. 228, 28 S. W. 503; Buchanan v. Commonwealth, 95 Ky. 334, 25 S. W. 265; Patterson v. Commonwealth, 99 Ky. 610, 5 S. W. 765; Long v. Stone, 19 Ky. L. R. 246, 39 S. W. 836; Barnard v. Gall, 43 La. Ann. 959, 10 So. 5; Towle v. Marrett, 3 Greenlf. 22, 14 Am. Dec. 206; Knight v. Aroostook R. R. Co., 67 Me. 291; Dugan v. Gittings, 3 Gill, 138; Mayor, etc. v. Groshen, 80 Md. 436; Montel v. Consolidated Coal Co., 89 Md. 164; Goodenow v. Buttrick, 7 Mass. 140; Ellis v. Paige, 1 Pick. 48; Ashby, Appellant, 4 Pick. 21, 28; Commonwealth v. Cooley, 10 Pick. 37; Commonwealth

consolidate the laws for the incorporation of ecclesiastical bodies," it was held that the use of the word "consolidate" indicated very clearly that the purpose of the legislature

- v. Kelliher, 12 Allen, 480; Pratt v. Street Commissioner, 139 Mass. 559, 2 N. E. 675; Shannon v. People, 5 Mich. 71, 85; Attorney-General v. Parsell, 100 Mich. 170, 58 N. W. 839; Graham v. Muskegon County Clerk, 116 Mich. 571, 74 N. W. 729; Attorney-General v. Commissioner of Railroads, 117 Mich. 477, 76 N. W. 69; Rundlett v. St. Paul, 64 Minn. 223, 66 N. W. 987; School District v. Eckert, 84 Minn. 417, 87 N. W. 1019; Swann v. Buck, 40 Miss. 278; Myers v. Marshall Co., 55 Miss. 844; Gibbons v. Brittenum, 56 Miss. 232; State v. Order of Elks, 69 Miss. 895, 13 So. 255; State Rev. Agent v. Hill, 70 Miss. 106, 11 So. 789; Smith v. State, 14 Mo. 147; State v. Woodson, 128 Mo. 497, 31 S. W. 105; Proctor v. Cascade County, 20 Mont. 315, 50 Pac. 1017; State v. Bemis, 45 Neb. 724, 64 N. W. 348; Thorpe v. Schooling, 7 Nev. 15; State v. Rogers, 10 Nev. 250. 21 Am. Rep. 738; Leighton v. Walker, 9 N. H. 59; Mersereau v. Mersereau County, 51 N. J. Eq. 382, 26 Atl. 682; Roche v. Jersey City, 40 N. J. L. 257; State v. Trenton, 56 N. J. L. 469, 29 Atl. 183; State v. Camden, 58 N. J. L. 515, 33 Atl. 846; Camden v. Varney, 63 N. J. L. 325, 43 Atl. 889; Tafoya v. Garcia, 1 N. M. 486; Heckman v. Pinkney, 81 N. Y. 211; Matter of New York Institution, 121 N. Y. 234, 24 N. E. 378; People v. Carr, 36 Hun, 488; Eagan v. Rochester, 68 Hun, 381, 22 N. Y. S. 955; People v. Upson, 79 Hun, 87, 29 N. Y. S. 615; Mairs v. B. & O. R. R. Co., 78 App. Div. 265, 76 N. Y. 838; People v. Police Com'rs, 79 App. Div. 82, 79 N. Y. S. 710; People v. Cleary, 13 Misc. 546, 35 N. Y. S. 588; State v. Seaborn, 4 Dev. 305; Little v. Cogswell, 20 Ore. 345, 25 Pac. 727; Strickland v. Geide, 31 Ore. 373, 49 Pac. 982; Continental Ins. Co. v. Rigger, 31 Ore. 336, 48 Pac. 476; Ex parte Ferdon, 35 Ore. 171, 57 Pac. 376; Reed v. Dunbar, 41 Ore. 509, 69 Pac. 451; Commonwealth v. Crowley, 1 Ashm. 179; Fenner v. Luzerne County, 167 Pa. St. 632, 31 Atl. 862; Matter of Emsworth Borough, 5 Pa. Supr. Ct. 29; Davis v. Carew, 1 Rich. 275; Laurens v. Crawford, 55 S. C. 594, 32 S. E. 728; State v. Welbers, 11 S. D. 86, 75 N. W. 820; Smith v. Hickman's Heirs, Cooke (Tenn.), 326; Furman v. Nichol, 3 Cold. 439; Mayor v. Dearmon, 2 Sneed, 120; Terrell v. State, 86 Tenn. 523, 8 S. W. 212; State v. Butcher, 93 Tenn. 679, 28 S. W. 296; Puckett v. Springfield, 97 Tenn. 264, 37 S. W. 2; Maxwell v. Stuart, 99 Tenn. 409, 42 S. W. 84; Bryan v. Sundberg, 5 Tex. 418; Stirman v. State, 21 Tex. 734; Anderson v. Levyson, 1 Tex. App. 520; Etter v. Mo. Pac. Ry. Co., 2 Tex. App. 48; Harold v. State, 16 Tex. App. 157; Stebbins v. State, 22 Tex. App. 32; Dickinson v. State, 38 Tex. Crim. App. 472, 41 S. W. 759, 43 S. W. 520; Bartch v. Meloy, 8 Utah, 424, 32 Pac. 694; Boston Nat. Bank v. Atkins, 72 Vt. 83, 47 Atl. 176; State v. Carron Hill Coal Co., 4 Wash. 422, 30 Pac. 728; Baer v. Choir, 7

was to collect in one act all the law relating to the subject.⁵⁹ In all cases of repeal by revision the absence of express words of repeal is unimportant.⁶⁰

§ 270. As a general rule whatever is excluded from the revised act is repealed.—The purport of the numerous cases cited in the last section is that where a statute is revised, or a series of acts on the same subject are revised and consolidated into one, all parts and provisions of the former act or acts, that are omitted from the revised act, are repealed.⁶¹ “Even although the provisions of unrepealed leg-

Wash. 631, 82 Pac. 776, 36 Pac. 286; McMaster v. Advance Thresher Co., 10 Wash. 147, 38 Pac. 760; Cochran v. King County, 12 Wash. 518, 41 Pac. 922; Leavitt v. Chambers, 16 Wash. 353, 47 Pac. 755; Burlander v. Railway Co., 26 Wis. 76; Simmons v. Bradley, 27 Wis. 689; Gilbank v. Stephenson, 30 Wis. 157; Moore v. Railroad Co., 34 Wis. 173; Oleson v. Railway Co., 36 Wis. 383; State v. Campbell, 44 Wis. 529; Schneider v. Staples, 66 Wis. 167, 28 N. W. 145; Smith v. Eau Claire, 78 Wis. 457, 47 N. W. 830; Dane County v. Reindahl, 104 Wis. 302, 80 N. W. 438; United States v. Claflin, 97 U. S. 546, 24 L. Ed. 1082, 1085; Cook County Nat. Bank v. United States, 107 U. S. 445, 2 S. C. Rep. 561, 27 L. Ed. 537; Pana v. Bowler, 107 U. S. 529, 2 S. C. Rep. 704, 27 L. Ed. 424; District of Columbia v. Hutton, 143 U. S. 18, 12 S. C. Rep. 369, 36 L. Ed. 60; United States v. Ranellett, 172 U. S. 133, 19 S. C. Rep. 114, 43 L. Ed. 293; The Paquete Habana, 175 U. S. 677, 20 S. C. Rep. 290, 44 L. Ed. 320; United States v. Warwick, 51 Fed. 280; Kent v. United States, 68 Fed. 536; Kent v. United States, 73 Fed. 680, 19 C. C. A. 642,

38 U. S. App. 554; Rogers v. Nashville, etc. Ry. Co., 91 Fed. 299, 33 C. C. A. 517; United States v. Cheeseman, 3 Sawyer, 424, Fed. Cas. No. 14,790.

⁵⁹ Graham v. Muskegon County Clerk, 116 Mich. 571, 573, 74 N. W. 729.

⁶⁰ People v. Board of Education, 166 Ill. 388, 46 N. E. 1099; Canal Commissioners v. East Peoria, 179 Ill. 214, 53 N. E. 633; State v. Countryman, 57 Kan. 815, 48 Pac. 137.

⁶¹ The following are especially in point: Husbands v. Tally, 3 Penn. (Del.) 88, 47 Atl. 1009; Jernigan v. Holden, 34 Fla. 530, 16 So. 413; Washington Heights v. Moffatt, 57 Ill. App. 269; Buchanan v. Commonwealth, 95 Ky. 334, 25 S. W. 265; Smith v. Mattingly, 96 Ky. 228, 28 S. W. 503; Patterson v. Commonwealth, 99 Ky. 610, 5 S. W. 765; Barnard v. Gall, 43 La. Ann. 959, 10 So. 5; State v. Order of Elks, 69 Miss. 895, 13 So. 255; State Revenue Agent v. Hill, 70 Miss. 106, 11 So. 789; Mairs v. B. & O. R. R. Co., 73 App. Div. 265, 76 N. Y. S. 838; State v. Welbers, 11 S. D. 86, 75 N. W. 820; Terrell v. State, 86 Tenn. 523,

islation may not be inconsistent with those of a new enactment, still when it is plain that it is the legislative intent to embrace the whole subject, it is well settled that what is not included in the later statute must be held to have been discarded."⁶²

A revising statute embracing antecedent general laws on various subjects and reducing them to one system and one text repeals all prior statutes upon the same subjects not included in the body of the revision and not exempted by an express clause.⁶³ Where one act is framed from another, some parts taken and others omitted; or where there are two acts on the same subject, and a later embraces all the provisions of the first and also new provisions, the later act operates, without any repealing clause, as a repeal of the first.⁶⁴ But the object of the old and the new acts must be the same.⁶⁵ The fact of revision raises a presumption of a complete code, or a complete treatment of the subjects embraced in it.⁶⁶

§ 271 (156). The important question in these cases is whether a later act is intended by the legislature to be a re-

8 S. W. 212; *Puckett v. Springfield*, 97 Tenn. 264, 37 S. W. 2; *Dane County v. Reindahl*, 104 Wis. 302, 80 N. W. 438.

⁶² *Camden v. Varney*, 63 N. J. L. 325, 329, 43 Atl. 889 (Court of Errors and Appeals). To same effect: *Dillon v. Bicknell*, 116 Cal. 111, 47 Pac. 937. In *People v. Thornton*, 186 Ill. 162, 173, 57 N. E. 841, the court says: "Where the legislature frames a new statute upon a certain subject-matter, and the legislative intention appears from the latter statute to be to frame a new scheme in relation to such subject-matter and make a revision of the whole subject, there is in effect a legislative declaration, that whatever is embraced in the new stat-

ute shall prevail, and that whatever is excluded is discarded."

⁶³ *State v. Judge*, 37 La. Ann. 578; *Clay Co. Sup'rs v. Chickasaw Co. Sup'rs*, 64 Miss. 534; *Stebbins v. State*, 22 Tex. App. 32; *State v. Courtney*, 73 Iowa, 619, 35 N. W. 685.

⁶⁴ *Ellis v. Paige*, 1 Pick. 43; *United States v. Tynen*, 11 Wall. 88, 20 L. Ed. 153; *Mears v. Stewart*, 31 Ark. 17.

⁶⁵ *United States v. Claffin*, 97 U. S. 546, 24 L. Ed. 1082, 1085; *Matter of Commissioners of Central Park*, 50 N. Y. 493, 497.

⁶⁶ *Broadbuss v. Broadbuss*, 10 Bush, 299; *Commonwealth v. Mason*, 83 Ky. 253; *Jernigan v. Holden*, 34 Fla. 539, 16 So. 413.

vision of the law relating to the subjects within its purview. It cannot be so intended unless it is a complete substitute for the previous law and contains the only rule or all the legislation which is intended to have force with regard to those subjects. An act which professes to be a revision, and has such scope of subject-matter that its title and profession are not illusory, should obviously so operate.⁶⁷ So where there are two statutes on the same subject, passed at different dates, and it is plain from the frame-work and substance of the last that it was intended to cover the whole subject, and to be a complete and perfect system or provision in itself, the last must be held to be a legislative declaration that whatever is embraced in it shall prevail and whatever is excluded is discarded and repealed.⁶⁸ Though a revision operates to repeal the laws revised whether repugnant or not, those portions that are re-enacted are continuations.⁶⁹ The revision is, however, a re-enactment, and to be alone consulted to ascertain the law when its meaning is plain; but when there is irreconcilable conflict of one part with another, the part last enacted in the original form will govern.⁷⁰ And when it becomes necessary to construe language used in the revision which leaves a substantial doubt of its meaning, the

⁶⁷ *United States v. Bowen*, 100 U. S. 508, 25 L. Ed. 631; *Arthur v. Dodge*, 101 U. S. 34, 25 L. Ed. 948; *Myer v. Car Co.*, 102 U. S. 1, 26 L. Ed. 59; *United States v. Lacher*, 184 U. S. 624, 10 S. C. Rep. 625, 33 L. Ed. 1080; *Vietor v. Arthur*, 104 U. S. 498, 26 L. Ed. 633; *Pratt v. Street Com'rs*, 139 Mass. 559, 2 N. E. 675; *Broadbuss v. Broadbuss*, 10 Bush, 299; *Commonwealth v. Mason*, 82 Ky. 256; *Cambria Iron Co. v. Ashburn*, 118 U. S. 54, 6 S. C. Rep. 920, 30 L. Ed. 60.

⁶⁸ *Bracken v. Smith*, 89 N. J. Eq. 169; *Murdock v. Memphis*, 20 Wall. 617, 22 L. Ed. 429; *Heckmann v. Pinkney*, 81 N. Y. 211; *Johnston's*

Estate, 33 Pa. St. 511; *Herron v. Carson*, 26 W. Va. 62; *Rhoads v. Hoerstown Building, etc. Ass'n*, 82 Pa. St. 180; *Cahall v. Citizens' Mut. B. Ass'n*, 61 Ala. 232.

⁶⁹ *Wright v. Oakley*, 5 Met. 406; *Pacific Mail Steamship Co. v. Joliffe*, 2 Wall. 450, 458, 17 L. Ed. 805; *Mitchell v. Halsey*, 15 Wend. 241; *Douglas v. Douglas*, 5 Hun, 140; *Matter of Southworth*, id. 55; *Stafford v. His Creditors*, 11 La. Ann. 470; *State ex rel. v. Wiltz*, id. 439.

⁷⁰ *Winn v. Jones*, 6 Leigh, 74; *Blackford v. Hurst*, 26 Gratt. 206; *Hurley v. Town of Texas*, 20 Wis. 634.

original statutes may be resorted to for ascertaining that meaning.⁷¹ In such case the title of the original act may be considered, especially where such act is passed in a state whose constitution requires the subject to be there expressed.⁷² In Louisiana it seems to be settled that the re-enactment into a code of the general provisions of prior laws does not repeal exceptions to which those general provisions were subject.⁷³

§ 272. Apparent exceptions to the general rule — Effect of express repeal of inconsistent acts and parts of acts.— Where the revising act prescribes its operation or effect upon a previous statute, it will have no other.⁷⁴ Where a revising act is declared to be in aid of and supplemental to the former, the latter is continued in force as to all provisions which are not repugnant to the new act.⁷⁵ There is apparently some difference of opinion as to the effect of a clause in the revising act which expressly repeals all inconsistent acts and parts of acts.⁷⁶ If the new act is intended as a revision and substitute for the former act or acts, the general rule applies, and the former act or acts are repealed *in toto* though they may contain parts or provisions which are not embraced in the new act and are not repugnant to its provisions.⁷⁷ Some cases, however, hold that the insertion of such an express repealing clause implies that the acts

⁷¹ *United States v. Bowen*, 100 U. S. 508, 25 L. Ed. 631; *United States v. Hirsch*, *id.* 83, 25 L. Ed. 539; *Vietor v. Arthur*, 104 U. S. 498, 26 L. Ed. 633; *Myer v. Car Co.*, 102 U. S. 1, 26 L. Ed. 59; *United States v. Lacher*, 134 U. S. 624, 10 S. C. Rep. 625, 33 L. Ed. 1080.

⁷² *Myer v. Car Co.*, 102 U. S. 1, 26 L. Ed. 59.

⁷³ *Miller v. Mercier*, 3 Martin (N. S.), 236, 15 Am. Dec. 156.

⁷⁴ *Patterson v. Tatum*, 8 Sawy. 164, Fed. Cas. No. 10,830; *Pursell v.*

N. Y. Life Ins. Co., 42 N. Y. Super. Ct. 383.

⁷⁵ *People v. Harris*, 123 N. Y. 70, 25 N. E. 317.

⁷⁶ See *ante*, § 256.

⁷⁷ *Attorney-General v. Parsall*, 100 Mich. 170, 58 N. W. 839; *State v. Carron Hill Coal Co.*, 4 Wash. 422, 30 Pac. 728; *Baer v. Choir*, 7 Wash. 631, 32 Pac. 776, 36 Pac. 286; *Smith v. Eau Claire*, 78 Wis. 457, 47 N. W. 830; *The Paqueta Habana*, 175 U. S. 677, 20 S. E. Rep. 290, 44 L. Ed. 320.

and parts of acts not inconsistent were not intended to be repealed, and consequently that they remain in force.⁷⁸

An Illinois act of 1872 in regard to justices of the peace and constables, in sections 75 to 80 provided for writs of *certiorari* from the circuit court to justices of the peace and prescribed the procedure in such cases. In 1895 an act was passed to revise the law in regard to justices of the peace and constables, which omitted the above sections and made no provision for such writs. The new act, in several sections, recognized the right to such a writ. It was held that the sections in question were not repealed.⁷⁹ An act for the organization and management of industrial schools, for the care and training of such boys and girls as might be committed to them under the act, provided that the expense of the children so committed should be borne by the county of their residence. Afterwards the act was revised and this provision was omitted and no provision made for the payment of such expense. It was held that the provision was not repealed.⁸⁰ An act to revise and consolidate the various acts on a general subject will not repeal a particular act relating to some branch of that subject which is omitted from the revision and whose subject-matter is not covered by it. Thus, an act to revise the criminal law and containing no provisions on the subject of pools, trusts, and conspiracies in restraint of trade, was held not to repeal a particular act on that subject.⁸¹ So a general revision of the revenue laws was held not to repeal the inheritance tax

⁷⁸ Bank of British North America v. Cahn, 79 Cal. 463, 21 Pac. 863; 449, 88 Pac. 1184; Lewis v. Stout, 22 Wis. 234; Holden v. Minnesota, 137 U. S. 483, 11 S. E. Rep. 143, 34 L. Ed. 734.

Gaston v. Merriam, 33 Minn. 271, 22 N. W. 614; Barden v. Wells, 14 App. 399.

Mont. 462, 36 Pac. 1046; State v. Craig, 32 Ohio C. C. 441; State v. Pollard, 6 R. L. 290; Hurst v. Samuels, 29 S. C. 476, 7 S. E. 822; Cosh-

Murray Co. v. Tuttich, 10 Wash. 108 Ky. 59, 57 S. W. 471.

⁷⁹ Gibson v. Ackerman, 70 Ill.

⁸⁰ Wisconsin Industrial School for Girls v. Clark County, 103 Wis. 651, 79 N. W. 422.

⁸¹ Commonwealth v. Grinstead,

law, nor a law imposing a privilege tax on railroads; the new law being silent on those subjects.⁸² A revision of the law in regard to local improvements was held not to repeal a provision of the former law prescribing a special limitation for the bringing of any suit to set aside or enjoin a special assessment.⁸³

§ 273. Repeal and re-enactment—Effect of re-enactment on intermediate acts.—This subject has already been considered to some extent in a former chapter.⁸⁴ Where an act is amended or revised, and the former act expressly or by implication repealed, such provisions of the old law as are substantially re-enacted are deemed to be continuous.⁸⁵ "A later law which is merely a re-enactment of a former does not repeal an intermediate act which has qualified or limited the first one, but such intermediate act will be deemed to remain in force, and to qualify or modify the

⁸² *Zickler v. Union Bank & T. Co.*, 104 Tenn. 277, 57 S. W. 341.

⁸³ *Kansas City v. Kimball*, 60 Kan. 224, 56 Pac. 78. See also *In re Assignment of Gilbert*, 94 Wis. 108, 68 N. W. 863.

⁸⁴ See *ante*, §§ 234, 238.

⁸⁵ *Forbes v. Board of Health*, 27 Fla. 189, 9 So. 446, 26 Am. St. Rep. 63; *Swan v. Kemp*, 97 Md. 686; *State v. Mason*, 153 Mo. 23, 54 S. W. 524; *Sternberg v. State*, 50 Neb. 127, 69 N. W. 849; S. C. on rehearing, 50 Neb. 139, 69 N. W. 853; *State v. Wimpfheimer*, 69 N. H. 166, 38 Atl. 786; *State v. Bellamy*, 120 N. C. 212, 27 S. E. 113; *Robinson v. Goldsboro*, 122 N. C. 211, 30 S. E. 324; *Gull River Lumber Co. v. Lee*, 7 N. D. 135, 73 N. W. 430; *Wells County v. McHenry*, 7 N. D. 246, 74 N. W. 241; *Barclay v. Leas*, 9 Pa. Co. Ct. 314; *Pratt v. Swan*, 16 Utah, 483, 52 Pac. 1092; *State v.*

Mines, 38 W. Va. 125, 18 S. E. 470; *Burns v. Hays*, 44 W. Va. 503, 30 S. E. 101; *Cox v. N. W. Lumber Co.*, 82 Wis. 141, 51 N. W. 1130; *Bear Lake & Riv. W. W. & Irr. Co. v. Garland*, 164 U. S. 1, 17 S. C. Rep. 7, 41 L. Ed. 327; *Julien v. Model B. L. & L. Ass'n*, 116 Wis. 79, 93 N. W. 561; *Hellman v. Shoulters*, 114 Cal. 136, 45 Pac. 1068; *State v. Kates*, 140 Ind. 46, 48 N. E. 365; *Hancock v. District Township*, 78 Iowa, 550, 43 N. W. 527; *State v. Bemis*, 45 Neb. 724, 64 N. W. 348; *Matter of Davies*, 163 N. Y. 89, 61 N. E. 118; *Matter of Brundage*, 31 App. Div. 348, 52 N. Y. S. 362; *Mudgett v. Liebes*, 14 Wash. 482, 45 Pac. 19; *State v. Howe*, 95 Wis. 530, 70 N. W. 670; *Dennison v. Allen*, 106 Mich. 295, 64 N. W. 88; *State v. Prouty*, 115 Iowa, 657, 84 N. W. 670; *Matter of Estate of Prine*, 136 N. Y. 347, 32 N. E. 1091, 18 L. R. A. 713.

new act in the same manner as it did the first.”⁸⁶ This is especially true if the intermediate law is special or particular and the re-enacted law is a general law on the same subject.⁸⁷ Where a law is amended and re-enacted as amended, any intermediate law inconsistent with the new matter introduced, or change made by the amendment, will be repealed.⁸⁸ Where a law is substantially re-enacted it is said to show that the legislature did not regard it as repugnant to an intermediate act to some extent covering the same subject.⁸⁹ A town charter granted in 1857 forbade the sale of liquor. An amendment made in 1859 gave power to license its sale. In 1870 the charter of 1857 was re-enacted and the limits of the town extended. This was held not to repeal the act of 1859, but to be a mere declaration that the act of 1857 was still in force, and related back to the time of its original passage.⁹⁰ Section 5 of an act of Nevada of 1885 in regard to the compensation of county officers fixed the compensation of the county officers of Elk county, giving the sheriff certain fees, the district attorney a salary of \$2,000 and the superintendent of schools a salary of \$600. February 23, 1887, an act was passed to consolidate certain county offices, which provided that district attorneys should be *ex officio* superintendents of schools without additional compensation. On March 5, 1887, section 5 of the act of 1885 was amended so as to give the sheriff of Elk county a salary of \$4,000, in lieu of fees, and the section re-enacted

⁸⁶ *Harrison v. Board of Supervisors*, 117 Mich. 215, 75 N. W. 456; *Powell v. King*, 78 Minn. 83, 80 N. W. 850; *Hawes v. Fliegler*, 87 Minn. 319, 92 N. W. 223; *Co-operative S. & L. Ass'n v. Fawick*, 11 S. D. 589, 79 N. W. 847; *Bently v. Adams*, 92 Wis. 386, 66 N. W. 505; *Haritwen v. The Louis Olsen*, 52 Fed. 652; *The Louis Olsen v. Haritwen*, 57 Fed. 845.

⁸⁷ *Gazollo v. McCann*, 63 Mo. App.

414; *State v. Beard*, 21 Nev. 218, 29 Pac. 531; *State v. Commissioners*, 106 Wis. 584, 82 N. W. 549.

⁸⁸ *Hawes v. Fliegler*, 87 Minn. 319, 92 N. W. 223; *Commonwealth v. Taylor*, 159 Pa. St. 451, 28 Atl. 348; *Sheriff v. Kershaw County*, 56 S. C. 400, 34 S. E. 694.

⁸⁹ *Lynch v. Chase*, 55 Kan. 367, 40 Pac. 666.

⁹⁰ *Horn v. State*, 114 Ga. 509, 40 S. E. 768.

including the salary of \$600 for the superintendent of schools. It was held that the only object of the act of 1887 was to change the compensation of the sheriff to a salary, that it did not repeal or affect the act of February, 1887, and that the district attorney was not entitled to the salary of \$600 as *ex officio* superintendent of schools.⁹¹

§ 274 (157). **As a rule general laws will not impliedly repeal those which are special or local.**—A general law prescribing a rule universal as to a subject properly includes that entire subject and operates over every part of the state. The common law adapts itself to varying conditions by its flexible principles; but statutes are made to apply to given conditions by classifications, provisos, exceptions and limitations. A general law may thus be prevented from operating upon every subject, and from taking effect in every place. The purpose of a general act relative to a given subject may harmonize with a different purpose on that subject in a particular locality, or under special conditions, or as it affects a particular interest or a particular person or class; it may harmonize in the sense that both purposes may be effectuated. The purpose of the general law may be carried out except as to the particulars in which a different intention is manifested. It is a principle that a general statute without negative words will not repeal by implication from their repugnancy the provisions of a former one which is special, local, or particular, or which is limited in its application, unless there is something in the general law

⁹¹ *State v. Elk County Com'rs*, 21 Nev. 19, 23 Pac. 935. In *Hawes v. Fliegler*, 87 Minn. 319, 92 N. W. 223, the court says: "A statute amending a previous one, while it might not affect an intermediate law, if its terms give best expression to the legislative will, should be held to do so if a reasonable regard for the apparent purpose of the law-makers required that result, for

the rules which have been adopted by the courts to construe acts of the legislature have the ultimate object of discovering their sensible design, rather than to reach logical deductions, since the intention of the legislature should always be followed whenever it can be discovered, although the construction seem contrary to the letter of the statute."

or in the course of legislation upon its subject-matter that makes it manifest that the legislature contemplated and intended a repeal.⁹² "It is the established rule of construction that the law does not favor a repeal by implication, but

- ⁹² *City Council v. National B. & L. Ass'n*, 108 Ala. 336, 18 So. 816; *Roy v. Henderson*, 132 Ala. 175, 81 So. 457; *Ex parte Smith*, 40 Cal. 419; *Wood v. Election Com'rs*, 58 Cal. 561; *People v. Sands*, 102 Cal. 12, 36 Pac. 404; *Banks v. Yolo County*, 104 Cal. 258, 37 Pac. 900; *People v. Pacific Imp. Co.*, 130 Cal. 442, 62 Pac. 739; *Schwenke v. Union Depot & R. R. Co.*, 7 Colo. 512, 5 Pac. 816; *Rice v. Goodwin*, 2 Colo. App. 267, 30 Pac. 330; *New York, N. H. & H. R. R. Co. v. Bridgeport Traction Co.*, 65 Conn. 410, 32 Atl. 953, 29 L. R. A. 367; *Territory v. McPherson*, 6 Dak. 27, 50 N. W. 351; *United States v. Sampson*, 19 App. Cas. (D. C.) 419; *Haywood v. Mayor*, 12 Ga. 404; *Mayor v. Minor*, 70 Ga. 191; *McGruder v. State*, 83 Ga. 616, 10 S. E. 441; *Montford v. Allen*, 111 Ga. 18, 36 S. E. 305; *Western & Atlantic R. R. Co. v. Atlanta*, 113 Ga. 537, 38 S. E. 996, 54 L. R. A. 294; *Covington v. East St. Louis*, 78 Ill. 548; *People v. Mayor*, 130 Ill. 406, 22 N. E. 833; *Kuenster v. Board of Education*, 134 Ill. 165, 24 N. E. 609; *Cook County v. Gilbert*, 146 Ill. 268, 33 N. E. 761; *Trausch v. Cook County*, 147 Ill. 534, 35 N. E. 477; *Ridgway v. Gallatin County*, 181 Ill. 521, 55 N. E. 146; *People v. Brown*, 189 Ill. 619, 60 N. E. 46; *People v. Marquiss*, 192 Ill. 377, 61 N. E. 852; *Quincy v. O'Brien*, 24 Ill. App. 591; *Rushville v. Rushville*, 31 Ill. App. 320; *Gilbert v. Cook County*, 44 Ill. App. 69; *People v. Mount*, 87 Ill. App. 194; *Shea v. Muncie*, 148 Ind. 14, 46 N. E. 138; *Commonwealth v. Cain*, 14 Bush, 525; *Adams Express Co. v. Owensboro*, 85 Ky. 265; *Cravens v. Adair County Court*, 17 Ky. L. R. 71, 30 S. W. 414; *Board of Trustees v. Louisville & N. R. R. Co.*, 17 Ky. L. R. 160, 30 S. W. 620; *Mauget v. Plummer*, 21 Ky. L. R. 641, 52 S. W. 844; *State v. Labatut*, 39 La. Ann. 513, 2 So. 550; *Garrett v. Mayor*, 47 La. Ann. 618, 17 So. 238; *Cooper v. Holmes*, 71 Md. 20, 17 Atl. 711; *McCracken v. State*, 71 Md. 150, 17 Atl. 932; *Crane v. Reeder*, 23 Mich. 322, 334; *Highland Park v. McAlpine*, 117 Mich. 666, 76 N. W. 159; *University Regents v. Auditor-General*, 109 Mich. 134, 66 N. W. 956; *Tierney v. Dodge*, 9 Minn. 166; *State v. Archibald*, 43 Minn. 328, 45 N. W. 606; *Moore v. Minneapolis*, 43 Minn. 418, 45 N. W. 719; *State v. Egan*, 64 Minn. 381, 67 N. W. 77; *Trautman v. McLeod*, 74 Minn. 110, 76 N. W. 964; *State v. Lindquist*, 77 Minn. 540, 80 N. W. 701; *Deters v. Renick*, 37 Mo. 597; *McVey v. McVey*, 51 Mo. 406; *Pacific R. R. Co. v. Cass County*, 53 Mo. 17; *State v. Severance*, 55 Mo. 378, 386; *State v. De Bar*, 58 Mo. 395; *State v. Frazier*, 98 Mo. 426, 11 S. W. 973; *State v. Walbridge*, 119 Mo. 383, 24 S. W. 457, 41 Am. St. Rep. 663; *State v. St. Louis School Board*, 131 Mo. 505, 33 S. W. 3; *Wilson v. Knox County*, 132 Mo. 387, 34 S. W. 45, 477; *State v. Slover*,

that where there are two or more provisions relating to the same subject-matter they must, if possible, be construed so as to maintain the integrity of both. It is also a rule that where two statutes treat of the same subject, one being

- 134 Mo. 10, 81 S. W. 1054, 34 S. W. 1102; *Ruschenberg v. Southern Electric R. R. Co.*, 161 Mo. 70, 61 S. W. 626; *State v. Fitzporter*, 17 Mo. App. 271, 274; *State v. Willard*, 39 Mo. App. 251; *State v. Daly*, 49 Mo. App. 184; *Tinkel v. Griffen*, 26 Mont. 426, 68 Pac. 859; *Jackson v. Board of Sup'rs*, 34 Neb. 680, 686, 687, 52 N. W. 169; *Dawson County v. Clark*, 58 Neb. 756, 79 N. W. 822; *Kountze v. Omaha*, 63 Neb. 52, 88 N. W. 117; *State v. Branin*, 23 N. J. L. 484; *State v. Belvidere*, 25 N. J. L. 563; *State v. Mills*, 34 N. J. L. 177; *Anderson v. Hill*, 42 N. J. L. 351; *Vail v. Easton, etc. R. R. Co.*, 44 N. J. L. 237; *Sheridan v. Stevenson*, 44 N. J. L. 371; *People v. Palmer*, 52 N. Y. 83; *People v. Quigg*, 59 N. Y. 83; *McKenna v. Edmundstone*, 91 N. Y. 231; *Weller v. Nembach*, 114 N. Y. 36, 20 N. E. 623; *Buffalo Cem. Ass'n v. Buffalo*, 118 N. Y. 61, 22 N. E. 962; *Casterton v. Vienna*, 163 N. Y. 368, 57 N. E. 622; *Parker v. Elmira, etc. R. R. Co.*, 165 N. Y. 274, 59 N. E. 81; *People v. Supervisors*, 40 Hun, 353; *People v. Edwards*, 56 Hun, 377, 10 N. Y. S. 335; *People v. Pierson*, 59 Hun, 450, 13 N. Y. S. 365; *Reynolds v. Niagara Falls*, 81 Hun, 353, 30 N. Y. S. 954; *Matter of Taylor*, 3 App. Div. 244, 89 N. Y. S. 348; *Boechat v. Brown*, 9 App. Div. 369, 41 N. Y. S. 467; *Lewis v. Syracuse*, 13 App. Div. 587, 48 N. Y. S. 455; *People v. Keller*, 31 App. Div. 248, 52 N. Y. S. 950; *People v. Keller*, 35 App. Div. 493, 54 N. Y. S. 1011; *People v. O'Grady*, 46 App. Div. 213, 61 N. Y. S. 577; *Walden v. Relyea*, 89 App. Div. 241; *McLaughlin v. Page*, 14 Daly, 274; *People v. Carson*, 10 Misc. 237, 30 N. Y. S. 817; *Robbins v. State*, 8 Ohio St. 131, 191; *Ginn v. Commissioners*, 11 Ohio C. C. 806; *State v. Commissioners*, 2 Ohio C. D. 227; *Atchison, T. & S. F. R. Co. v. Haynes*, 8 Okl. 576, 58 Pac. 738; *State v. Sturgess*, 10 Ora. 58; *Omit v. Commonwealth*, 21 Pa. St. 426; *Dyer v. Covington*, 28 Pa. St. 186; *Jefferson v. Reitz*, 56 Pa. St. 44; *Rounds v. Waymont*, 81 Pa. St. 395; *Harrisburg v. Speck*, 104 Pa. St. 53; *Dick's Appeal*, 106 Pa. St. 589; *Mallory v. Commonwealth*, 115 Pa. St. 25, 7 Atl. 790; *Morrison v. Fayette County*, 127 Pa. St. 110, 17 Atl. 755; *Murdock's Petition*, 149 Pa. St. 341, 24 Atl. 222; *Bell v. Allegheny County*, 149 Pa. St. 381, 24 Atl. 209; *Safe Deposit & T. Co. v. Fricke*, 152 Pa. St. 231, 25 Atl. 530; *Shroder v. Lancaster*, 170 Pa. St. 136, 32 Atl. 587; *Commonwealth v. Cotton*, 14 Phila. 667; *Reading v. Shepp*, 2 Pa. Dist. Ct. 137; *North Towanda v. Bradford County*, 2 Pa. Dist. Ct. 517; *Commonwealth v. Angle*, 3 Pa. Dist. Ct. 637; *Providence v. Union R. R. Co.*, 12 R. I. 473; *Lowrey v. Mayor*, 23 R. I. 284, 49 Atl. 963; *Ex parte Schmidt*, 24 S. C. 363; *Barnett v. Maloney*, 97 Tenn. 697, 37 S. W. 689, 34 L. R. A. 541; *Houston & Tex. Cent. Ry. Co. v. State*, 95 Tex. 507, 62 S. W. 114;

special and the other general, unless they are irreconcilably inconsistent, the latter, although latest in date, will not be held to have repealed the former, but the special act will prevail in its application to the subject-matter as far as coming within its particular provisions. A special statute providing for a particular place, or applicable to a particular locality, is not repealed by a statute general in its terms and application, unless the intention of the legislature to repeal or alter the special law is manifest, although the terms of the general act would, taken strictly and but for the special law, include the case or cases provided for by it."⁹³

In many of the cases just cited there was a general repeal of all inconsistent acts and parts of acts. As a gen-

Ogden City v. Hamer, 12 Utah, 337, 42 Pac. 1113; University of Utah v. Richards, 20 Utah, 457, 59 Pac. 96, 77 Am. St. Rep. 928; Town School District v. School District, 72 Vt. 451, 48 Atl. 697; Trehy v. Marye, 100 Va. 40, 40 S. E. 126; Meade v. French, 4 Wash. 11, 29 Pac. 833; Seattle & Mont. Ry. Co. v. O'Meara, 4 Wash. 17, 29 Pac. 835; Pierce County v. Spike, 19 Wash. 652, 53 Pac. 822; Western Am. Co. v. St. Ann Co., 22 Wash. 158, 60 Pac. 158; Conley v. Supervisors, 2 W. Va. 416; Mason v. Harper's Ferry Bridge Co., 17 W. Va. 397; Sturm v. Fleming, 31 W. Va. 701, 8 S. E. 263; Baines v. Janesville, 100 Wis. 369, 75 N. W. 404; Harris v. Fond du Lac, 104 Wis. 44, 80 N. W. 66; Davies v. Fairbairn, 3 How. 636, 11 L. Ed. 760; State v. Stoll, 17 Wall. 425, 21 L. Ed. 650; Movius v. Arthur, 95 U. S. 144, 24 L. Ed. 420; Cass County v. Gillett, 100 U. S. 585, 25 L. Ed. 585; Kankakee County v. Aetna Life Ins. Co., 106 U. S. 668, 2 S. C. Rep. 80, 27 L. Ed. 309; Sa-

vannah v. Kelly, 108 U. S. 184, 2 S. C. Rep. 468, 27 L. Ed. 696; Ex parte Crow Dog, 109 U. S. 556, 3 S. C. Rep. 396, 27 L. Ed. 1030; United States v. Greathouse, 166 U. S. 601, 17 S. C. Rep. 701, 41 L. Ed. 1130; Rodgers v. United States, 185 U. S. 83, 22 S. C. Rep. 582, 46 L. Ed. 816; United States v. Nix, 189 U. S. 199, 23 S. C. Rep. 495; Conservators of River Thames v. Hall, L. R. 3 C. P. 415; Thorpe v. Adams, L. R. 6 C. P. 125; Queen v. Champreys, L. R. 6 C. P. 384; Mahoney v. Wright, 10 Ir. C. L. (N. S.) 420. See Red Rock v. Henry, 106 U. S. 596, 1 S. C. Rep. 434, 27 L. Ed. 251.

⁹³People v. Pacific Imp. Co., 130 Cal. 442, 445, 446, 62 Pac. 739. Similar expressions of opinion will be found in the following cases: Ridgeway v. Gallatin County, 181 Ill. 521, 526, 55 N. E. 146; Moore v. Minneapolis, 43 Minn. 418, 422, 45 N. W. 719; State v. Egan, 64 Minn. 331, 67 N. W. 77; State v. St. Louis School Board, 181 Mo. 505, 516, 33 S. W. 3; Kountze v.

eral rule the insertion of this general repealing clause does not add anything to the effect of the general act to repeal local or special laws.⁹⁴ But where there was only one general act upon which the clause could operate and there were many inconsistent local acts, it was held that the latter were repealed.⁹⁵

When the legislator frames a statute in general terms or treats a subject in a general manner, it is not reasonable to suppose that he intends to abrogate particular legislation to the details of which he had previously given his attention, applicable only to a part of the same subject, unless the general act shows a plain intention to do so.⁹⁶

Omaha, 68 Neb. 52, 54, 88 N. W. 117; Buffalo Cem. Ass'n v. Buffalo, 118 N. Y. 61, 66, 22 N. E. 962; Atchison, T. & S. F. R. R. Co. v. Haynes, 8 Okl. 576, 585, 58 Pac. 738.

⁹⁴ Reading v. Shepp, 2 Pa. Dist. Ct. 137; Casterton v. Vienna, 168 N. Y. 368, 57 N. E. 622. See State v. Butcher, 93 Tenn. 679, 28 S. W. 296; Felts v. Delaware, L. & W. R. R. Co., 170 Pa. St. 432, 33 Atl. 97; S. C., 178 Pa. St. 290; Felts v. Delaware, L. & W. R. R. Co., 195 Pa. St. 21, 45 Atl. 493.

⁹⁵ Commonwealth v. Middletown, 3 Pa. Dist. Ct. 639; Commonwealth v. McDonnell, 3 Pa. Dist. Ct. 767.

⁹⁶ Crow Dog, Ex parte, 109 U. S. 556, 3 S. C. Rep. 396, 27 L. Ed. 1030; Dwarris on St. 532; Sedgw. St. & Const. L. 98; State v. Judge of St. Louis P. Ct., 88 Mo. 529; Brown v. County Commissioners, 21 Pa. St. 37; State v. Treasurer, 41 Mo. 16, 24; Fosdick v. Perrysburg, 14 Ohio St. 472; Robbins v. State, 8 id. 131, 191; Williams v. Pritchard, 4 T. R. 2; Fitzgerald v. Champneys, 80 L. J. Ch. 782; S. C., 2 Johns. & H. 31; Thompson v. State, 60 Ark. 59, 28

S. W. 794; Mills v. Sanderson, 68 Ark. 180, 56 S. W. 779; Home for Inebriates v. Reis, 95 Cal. 142, 30 Pac. 205; Bateman v. Colgan, 111 Cal. 580, 44 Pac. 238; People v. Hutchinson, 172 Ill. 486, 50 N. E. 599; Kelly v. School Directors, 66 Ill. App. 134; Rankin v. Cowden, 66 Ill. App. 137; McDonnough County v. Thomas, 84 Ill. App. 408; Arnold v. Council Bluffs, 85 Iowa, 441, 52 N. W. 347; Boyd v. Randolph, 91 Ky. 472, 16 S. W. 133; Music v. Kansas City, etc. Ry. Co., 114 Mo. 309, 21 S. W. 491; State v. District Court, 14 Mont. 452, 37 Pac. 9; Mantle v. Largey, 15 Mont. 116, 41 Pac. 1077; Rymer v. Luzerne County, 142 Pa. St. 108, 21 Atl. 794, 12 L. R. A. 192; Altoona v. Calvert, 21 Pa. Co. Ct. 362; Hayes v. Arrington, 108 Tenn. 494, 68 S. W. 44; People v. Utah Com'rs, 7 Utah, 279, 26 Pac. 577; State v. Carson, 6 Wash. 250, 33 Pac. 428; State v. Purdy, 14 Wash. 843, 44 Pac. 857; Callvert v. Winsor, 26 Wash. 363, 67 Pac. 91; State v. Hobe, 106 Wis. 411, 82 N. W. 336. In State v. McCurdy, 62 Minn.

§ 275 (158). The special act must conflict, so far as it operates to the extent of its lesser scope, with the general act; otherwise there would generally be no question of repeal; it expresses a particular intent incompatible, *pro tanto*, with the intent of the general law. The general law can have full effect beyond the scope of the special law, and, by allowing the latter to operate according to its special aim, the two acts can stand together. Unless there is plain indication of an intent that the general act shall repeal the other, it will continue to have effect, and the general words with which it conflicts will be restrained and modified accordingly.⁹⁷ Where there are in one act or several contemporaneously passed, specific provisions relating to a particular subject, they will govern in respect to that subject as against general provisions contained in the same acts.⁹⁸

509, 516, 517, 64 N. W. 1183, the court says: "Repeals by implication are not favored. The question is one of legislative intent, and its intent is to be ascertained, as legislative intent is ascertained in other respects, when not expressly declared, by construction. Considerations of convenience, justice and reasonableness, when they can be invoked against the implication of repeal, are always very potent. Where a general intention is expressed, and also a particular intention is expressed which is incompatible with the general one, the particular intention shall be considered an exception to the general one. Thus, when the legislature enacts a statute in general terms it is not reasonable to suppose that they intended to abrogate particular legislation, to the details of which they had previously given their attention, unless the general act shows

a plain intention to do so. The general law can have full effect beyond the scope of the particular or special act, and, by allowing the latter to operate according to its special aim, the two acts can stand together."

⁹⁷ Dwarris on St. 765; Stockett v. Bird, 18 Md. 484; Crane v. Reeder, 22 Mich. 322, 334; Fosdick v. Perrysburg, 14 Ohio St. 472; Williams v. Pritchard, 4 T. R. 2.

⁹⁸ Felt v. Felt, 19 Wis. 198, 196; State v. Goetz, 22 id. 363; Crane v. Reeder, 22 Mich. 322. In Nusser v. Commonwealth, 25 Pa. St. 126, the question was whether an act imposing a fine of \$50 for selling liquors on Sunday within the county of Allegheny, and authorizing a summary conviction before a single justice of the peace, was repealed by a later statute imposing the same penalty for the same offense committed anywhere in the state, and prescribing a mode of proced-

It seems to be immaterial which statute is first enacted. If the special statute is later the enactment operates necessarily to restrict the effect of the general act from which it differs.⁹⁹

These interpretations harmonize with the rule that when a general intention is expressed, and also a particular intention, which is incompatible with the general one, the particular intention shall be considered an exception to the general one.¹ The special act is in the nature of an exception to the general law and suspends its operation in the field covered by the special act, and when the latter is re-

ure by indictment and jury trial. It was held to have the effect of repeal. The court say: "Where the prior enactment is local and the new one general in its operation, the maxim [that a repugnant statute is a repeal of a'l inconsistent provisions in a prior] applies with undiminished force, because the whole includes the several parts, and all local laws establishing one rule for one portion of the community, and a different one for the remaining portion, are inconvenient and of doubtful propriety, except where they relate to matters which are local in their nature, and are enacted by the proper municipal authorities of the territories over which they are designed to operate."

⁹⁹ McGavick v. State, 34 N. J. L. 509; Smith, Ex parte, 40 Cal. 419; Galway Presentments, Ex parte, 9 W. R. C. L. 114 (Q. B.); The Mayor v. Macon, etc. R. R. Co., 7 Ga. 221; Townsend v. Little, 109 U. S. 504, 3 S. C. Rep. 357, 27 L. Ed. 1012; Blain v. Bailey, 25 Ind. 165; Breden v. State, 88 Ala. 20, 7 So. 358; Cotton v. State, 63 Ark. 585, 37 S. W.

48; Beatty v. Commonwealth, 91 Ky. 313, 15 S. W. 856; Louisville v. Garr, 97 Ky. 583, 31 S. W. 281, 32 S. W. 748; State v. Towner, 26 Mont. 339, 67 Pac. 1004; Harrison v. Board of Sup'rs, 117 Mich. 215, 75 N. W. 456; Matter of Murray Hill Bank, 153 N. Y. 199, 47 N. E. 298; Barber County Com'rs v. Society for Savings, 101 Fed. 767, 41 C. C. A. 667; Howard v. Hulbert, 63 Kan. 793, 66 Pac. 1041, 88 Am. St. Rep. 267.

¹ Dwarris on St. 765; Stockett v. Bird, 18 Md. 484, 489; Churchill v. Crease, 5 Bing. 180; Pilkington v. Cooke, 16 M. & W. 615; Taylor v. Oldham, 4 Ch. Div. 395; In re Rouse, Hazard & Co., 91 Fed. 96, 33 C. C. A. 356. "It is a well settled rule of construction that, when there are two provisions, one of which is general and designed to apply to cases generally, and another is particular and relating only to one subject, the particular provision must prevail and must be treated as an exception to the general provision." Dahnke v. People, 168 Ill. 102, 111, 48 N. E. 137, 89 L. R. A. 197.

pealed the general law operates as if the special law had never existed.³

§ 276 (159). **The question is one of intent.**—There is no rule of law which prohibits the repeal of a special act by a general one, nor is there any principle forbidding such repeal without the use of words declarative of that intent. The question is always one of intention, and the purpose to abrogate the particular enactment by a later general statute is sufficiently manifested when the provisions of both cannot stand together. A special and local law provided that certain property should be subject to taxation; a subsequent general one that all such property should be exempt, and repealed all local or special acts inconsistent with its provisions. It was held that the special act was repealed.³ Special or local laws will be repealed by general laws when the intention to do so is manifest, as where the latter are intended to establish uniform rules for the whole state.⁴ Where there is an express repeal of all acts and parts of acts, general or special, which are inconsistent, the intent is manifest.⁵ A general law for the care of the poor provided that it should not be construed to repeal any local acts under which poor-houses had been built, or lands bought, or buildings commenced. This was held to show an intent to repeal all other local or

³ *Santa Barbara v. Eldred*, 95 Cal. 878, 30 Pac. 562; *Territory v. Pratt*, 6 Dak. 488, 43 N. W. 711; *Buckwalter v. Lancaster County*, 12 Pa. Supr. Ct. 272.

⁴ *New Brunswick v. Williamson*, 44 N. J. L. 165; *Pausch v. Guerard*, 67 Ga. 319; *Mechanics' & Traders' Bank v. Bridges*, 30 N. J. L. 112; *State v. Miller*, id. 368, 86 Am. Dec. 188; *Great Central Gas Cons. Co. v. Clarke*, 13 Com. B. (N. S.) 838; *Bramston v. Colchester*, 6 E. & B. 246; *Evansville v. Bayard*, 39 Ind. 450; *Willing v. Bozman*, 52 Md. 44.

⁴ *State v. Percy*, 44 Mo. 159; *People v. Miner*, 47 Ill. 38; *People v. Furman*, 85 Mich. 110, 48 N. W. 169; *Buffalo v. Neal*, 86 Hun, 76, 33 N. Y. S. 346; *People v. Brady*, 49 App. Div. 288, 63 N. Y. S. 145; *Barker v. Floyd*, 61 App. Div. 92, 60 N. Y. S. 1109; *Fraim v. Lancaster County*, 171 Pa. St. 486, 33 Atl. 339; *Jadwin v. Hurley*, 10 Pa. Supr. Ct. 104; *People v. Dalton*, 158 N. Y. 175, 52 N. E. 1113.

⁵ *Louisville Water Co. v. Clark*, 143 U. S. 1, 12 S. C. Rep. 346, 36 L. Ed. 55; *State v. Swanson*, 85 Minn. 112, 88 N. W. 416.

special acts.⁶ An act provided that a president of *each and every* village and incorporated town should be elected annually. The language was held to show an intent to repeal the special charter provisions of such municipalities as were inconsistent.⁷ A general statute provided that the real estate of *every* educational, benevolent and ecclesiastical corporation or association, which is leased or used for other purposes than the specific purposes of such corporation or association, should be subject to taxation as if held by an individual taxpayer. This was held to repeal an exemption in the charter of a theological institution.⁸ Other cases are to the same effect.⁹

A general act prescribing a mode of punishment for a specific offense throughout the state will repeal an act limited to a single county prescribing a different punishment.¹⁰ A general statute for the suppression of prostitution is inconsistent with a local statute authorizing a regulation of it.¹¹ A local or special law which adopts, by reference, provisions relating to procedure from an existing general statute, is not necessarily abrogated or affected by the subsequent repeal of the act containing the adopted provisions.¹²

§ 277. Illustrations — Local and special acts held to be repealed by general acts.— A general law authorizing counties to issue bonds to build roads and bridges was held to repeal a special law forbidding a particular county to issue bonds except for the purpose of refunding its indebtedness.¹³

⁶ Commonwealth v. Summer-
ville, 204 Pa. St. 300, 54 Atl. 27.

⁷ McCormick v. People, 139 Ill.
499, 28 N. E. 1106.

⁸ Hartford v. Hartford Theolog-
ical Seminary, 66 Conn. 475, 84 Atl.
488.

⁹ In re House Resolution, 12 Colo.
289, 21 Pac. 484; Hunt v. Card, 94
Me. 386, 47 Atl. 921; Quinn v. Cum-
berland County, 162 Pa. St. 55, 29
Atl. 289; Wagner Free Institute v.
Philadelphia, 132 Pa. St. 612, 19

Atl. 297, 19 Am. St. Rep. 613; Wahl
v. Nauvoo, 64 Ill. App. 17; Matter
of Dobson, 146 N. Y. 357, 40 N. E.
938; State v. Angel, 71 N. H. 224.
51 Atl. 905.

¹⁰ Nusser v. Commonwealth, 25
Pa. St. 126; Keller v. Common-
wealth, 71 id. 413.

¹¹ State v. Lewis, 5 Mo. App. 465.

¹² Schwenke v. Union Depot &
R. R. Co., 7 Colo. 512, 5 Pac. 816.

¹³ State v. West Duluth Land Co.,
75 Minn. 456, 71 N. W. 115.

An act requiring county warrants on funds of the current year to be paid out of such funds in preference to warrants issued in former years, repeals an act requiring the treasurer of a specified county to pay warrants in their numerical order on presentation.¹⁴ A local act providing that the western boundary of Wilkes-Barre should be the low-water mark of the Susquehanna river, was held to be repealed by a general act providing that where any township, borough or city is bounded by the nearest margin of any navigable stream, and the opposite township, borough or city is also bounded by the nearest margin of the same stream, then the middle of the stream should be the boundary between them.¹⁵ A statute providing for a particular class of local improvements was held to be repealed by a subsequent statute providing for all kinds of local improvements and containing inconsistent provisions.¹⁶ A statute authorizing the sheriff to bind the county for the support of prisoners, was held to be repealed by a law which provided that no county officer, except the board of county commissioners, should contract for the payment or expenditure of any county moneys for any purpose whatever, or purchase or contract for any goods, wares or merchandise, labor or services, without authority from the board.¹⁷

§ 278. Illustrations — Local and special acts held not to be repealed by general acts.— An act prescribing a form of ballot in a particular case, as in elections for the organiza-

¹⁴ *Cooper v. Wait*, 106 Ky. 628, 51 S. W. 161.

¹⁵ *Gilchrist v. Strong*, 167 Pa. St. 628, 31 Atl. 931.

¹⁶ *People v. Nelson*, 156 Ill. 864, 40 N. E. 957.

¹⁷ *State v. Washoe County Com'rs*, 22 Nev. 203, 37 Pac. 486. The following additional cases are referred to: *Spruance v. Truax*, 9 Houst. 129, 31 Atl. 589; *Starbird v. Brown*, 84 Me. 238, 24 Atl. 824; *Pool v. Brown*,

98 Mo. 675, 11 S. W. 743; *Pleasant Hill v. Dasher*, 120 Mo. 675, 25 S. W. 566; *State v. Davis*, 129 N. C. 570, 40 S. E. 112; *Felts v. Delaware, L. & W. R. R. Co.*, 170 Pa. St. 432, 33 Atl. 97; *S. C.*, 178 Pa. St. 290, 35 Atl. 983; *Felts v. Delaware, L. & W. R. R. Co.*, 195 Pa. St. 21, 45 Atl. 493; *Commonwealth v. Blackley*, 198 Pa. St. 372, 47 Atl. 1104; *State v. Butcher*, 93 Tenn. 679, 28 S. W. 296.

tion of villages, for the establishment of a high school district, for the issue of bonds by a county, and the like, is not repealed by a subsequent general ballot law which prescribes a form of ballot for the various sorts of elections.¹⁸ A provision in a special charter authorizing a municipality to regulate or prohibit the sale of liquor is not repealed by a subsequent general law on the subject.¹⁹ A special act granted to a cemetery association capacity to acquire lands in a village named for a public purpose; by the terms of the act the land so acquired was not liable to be taken for road purposes. An act was subsequently passed conferring general power to lay out and vacate roads and streets in cities and villages within their corporate limits. It was held that the two acts might stand together. Under the general law all roads and streets in the village are under its control except the lands of the association, and as to these the association has the exclusive control.²⁰

In the following cases the general and special laws are stated and in each case the general was held not to repeal the special, local or particular law: A particular statute giving the sheriff the custody and care of the court-house and jail in his county and a general law that the county board shall have the care and custody of all the real and personal estate owned by the county;²¹ a local act fixing the pay of the county auditors of Fayette county at three dollars a day without mileage and a general act fixing the pay of the county auditors at three dollars with mileage;²² a special act for the extension of a certain railroad and au-

¹⁸ *People v. Marquiss*, 192 Ill. 377, 61 N. E. 352; *Rankin v. Cowden*, 66 Ill. App. 137; *Tinkel v. Griffen*, 26 Mont. 426, 68 Pac. 859; *Matter of Taylor*, 3 App. Div. 244, 38 N. Y. S. 348; *People v. Utah Com'rs*, 7 Utah, 279, 26 Pac. 577.

¹⁹ *Shea v. Muncie*, 148 Ind. 14, 46 N. E. 138; *State v. Labatut*, 39 La. Ann. 518, 2 So. 550; *State v. Lind-*

quist, 77 Minn. 540, 80 N. W. 701; *Murdock's Petition*, 149 Pa. St. 341, 24 Atl. 222.

²⁰ *Village of Hyde Park v. Cemetery Ass'n*, 119 Ill. 141, 7 N. E. 627.

²¹ *McDonnough County v. Thomas*, 84 Ill. App. 408.

²² *Morrison v. Fayette County*, 127 Pa. St. 110, 17 Atl. 755.

thorizing it to charge four cents a mile and a general law for the regulation of railroad fares;²³ a charter provision giving the mayor and council the power to remove and suspend officers and a general law providing that any officer guilty of misconduct in office shall forfeit his office and be removed therefrom, and providing for a hearing in court and a judgment determining the forfeiture and ordering the removal;²⁴ a special charter provision that the village trustees shall be *ex officio* school trustees and a general law allowing women to vote for school trustees and to be elected to that office;²⁵ a special act detaching certain territory from one county and adding it to another, which required the approval of the voters of the latter county, and a general law that such a thing should not be done unless the question was submitted to and approved by the voters of both counties;²⁶ an act regulating costs in actions for assault and battery and a general law as to costs;²⁷ an act regulating appeals in condemnation cases and a general law as to appeals;²⁸ a special law authorizing a particular county to levy a tax to build a bridge and a general law limiting the rate of taxation by counties;²⁹ a law fixing the salary of county auditors in counties of over 150,000 inhabitants at five hundred dollars a year and a later law that the county auditors of each county should receive three dollars a day and mileage;³⁰ a special provision that notice of appeal may be served on the adverse party or his attorney and a general law that, in all cases where a party has an attorney, the service of papers shall be on the attorney instead of the party.³¹

²³ *Parker v. Elmira, etc. R. R. Co.*, 165 N. Y. 274, 59 N. E. 81.

²⁴ *State v. Walbridge*, 119 Mo. 888, 24 S. W. 457, 41 Am. St. Rep. 663.

²⁵ *Trautman v. McLeod*, 74 Minn. 110, 76 N. W. 964.

²⁶ *State v. Archibald*, 48 Minn. 328, 45 N. W. 606.

²⁷ *Meade v. French*, 4 Wash. 11, 29 Pac. 833.

²⁸ *Seattle & Mont. Ry. Co. v. O'Meara*, 4 Wash. 17, 29 Pac. 885.

²⁹ *Barnett v. Maloney*, 97 Tenn. 697, 37 S. W. 689, 34 L. R. A. 541.

³⁰ *Rymer v. Luzerne County*, 142 Pa. St. 108, 21 Atl. 794, 12 L. R. A. 192.

³¹ *Mantle v. Largey*, 15 Mont. 116, 41 Pac. 1077. The following additional cases are referred to: *Mills*

It is held in Pennsylvania that a special act relating to a particular city or county is not repealed by a subsequent act, general in form, which applies to a class of cities or counties, though such particular city or county may be the only one of the class at the time of the passage of the general law.³²

§ 279. **Effect of constitutional provisions requiring general laws and laws of uniform operation upon repeal of special by general laws.**—Where the constitution requires uniformity in respect to any matter or thing, a law passed to carry out the provision will repeal all inconsistent local and special laws on the subject.³³ Thus the constitution of Kentucky requires that the jurisdiction of justices of the peace shall be equal and uniform throughout the state. A law passed in conformity with this provision was held to repeal all inconsistent special legislation.³⁴ The supreme court of Pennsylvania says: "Ordinarily it is true that a

v. Sanderson, 68 Ark. 130, 56 S. W. 779; *People v. Knopf*, 186 Ill. 457, 57 N. E. 1059; *Kelly v. School Directors*, 66 Ill. App. 134; *Boyd v. Randolph*, 91 Ky. 472, 16 S. W. 133; *Casterloh v. Vienna*, 163 N. Y. 868, 57 N. E. 622.

³² *Bell v. Allegheny County*, 149 Pa. St. 381, 24 Atl. 209; *Safe Deposit & T. Co. v. Fricke*, 152 Pa. St. 231, 25 Atl. 530. In the first of these cases the court says: "To say that the county of Allegheny was the only county to which the thirteenth section could apply, and that therefore the legislature had that county in mind, and framed the section specially in reference to it, proves too much. Whenever the intent is to legislate for a particular county the resultant legislation contravenes section 7 of article 8 of the constitution, no matter how carefully that intent may be disguised.

But there is no evidence here of an intent to provide specially for Allegheny county by the thirteenth section. The act is an attempt, at least, at classification on the basis of population, and, if sustainable, it is so, and only so, because other counties may come into the several classes provided for. Hence it must not be assumed to have been enacted for the then present and with reference to certain counties, the names of which were cunningly suppressed, but for all time and with reference to the future changes of population."

³³ *McTigue v. Commonwealth*, 99 Ky. 66, 35 S. W. 121; *Commonwealth v. Wunch*, 167 Pa. St. 186, 31 Atl. 551; *Chalfant v. Edwards*, 176 Pa. St. 67, 34 Atl. 922.

³⁴ *McTigue v. Commonwealth*, 99 Ky. 66, 35 S. W. 121.

general law will not operate to repeal a previous local act without some words indicative of such an intention. But when it is the duty of the legislature to change an existing system because of some constitutional provision on the subject, and a law is passed for this purpose introducing a new system which is general in its terms and evidently intended to provide a uniform system for all subjects to which it relates, no repealing words are necessary.”³⁵

So where the constitution requires a change of system, as that certain officers shall be compensated by salaries instead of fees, and a law is passed in obedience to the constitutional mandate.³⁶

The constitution of New Jersey forbids special legislation for certain purposes and requires that such purposes shall be provided for by general laws. “In order to give effect to the manifest design of this constitutional provision,” says the court of errors and appeals, “general statutes passed in pursuance thereof should be deemed to repeal all inconsistent rules in special charters, whether an express repeal be stated or not; for if this force be not ascribed to them, the generality of the statutes will be defeated by their being confined to narrower limits than an entire class, and thus, by judicial interpretation, the statutes will become unconstitutional.”³⁷

The requirement that laws of a general nature shall have a uniform operation throughout the state is held to impart to such laws the effect of repealing inconsistent local and special laws.³⁸ But in Kentucky it is held that the passage

³⁵ *Chalfant v. Edwards*, 176 Pa. St. 67, 71, 84 Atl. 922. L. 180, 182, 19 Atl. 176. See also *Bowyer v. Camden*, 50 N. J. L. 87,

³⁶ *McCleary v. Allegheny County*, 163 Pa. St. 578, 30 Atl. 120; *Bounhorst v. Allegheny County*, 163 Pa. St. 588, 30 Atl. 123; *McGunnegle v. Allegheny County*, 163 Pa. St. 589, 30 Atl. 123; *Commonwealth v. Grier*, 152 Pa. St. 176, 25 Atl. 624. 11 Atl. 137; *Hoetzel v. East Orange*, 50 N. J. L. 354, 12 Atl. 911; *Crookall v. Matthews*, 61 N. J. L. 349, 39 Atl. 659; *Commonwealth v. Macferron*, 152 Pa. St. 244, 25 Atl. 556; *Quinn v. Cumberland County*, 163 Pa. St. 55, 29 Atl. 289.

³⁷ *Haynes v. Cape May*, 52 N. J. ³⁸ *Miller v. Curry*, 113 Cal. 644, 45-

of a general law on a subject as to which special legislation is prohibited and general laws required does not necessarily repeal all special laws on the subject, and that it is still a question of legislative intent.³⁹ The constitution of Missouri requires the general assembly, by general law, to designate the court or judge by whom the several classes of election contests shall be tried, and to regulate the manner of trial. In accordance with this provision a law was passed providing that the several circuit courts should have jurisdiction in cases of contested elections for county officers. This was held not to repeal a provision in a prior special act "establishing the office of marshal of Jackson county and defining his duties and powers," which conferred jurisdiction on the criminal court of that county to hear contested elections for said office.⁴⁰ The court, sitting in bank, says: "The provision for a general law was not intended to repeal special local acts then in existence. Unquestionably it was and is the design of the constitution to rid the state of the evil of a multitude of local and special laws and to adopt general laws whenever it is feasible, but general subsequent laws have not heretofore been construed as repealing the various special laws and charters of this state unless appropriate language has been used for that purpose."

X / § 280 (160). What is the later law which is potent to repeal.—If a conflict exists between two statutes or provisions, the earlier in enactment or position is repealed by the later.⁴¹ (*Leges posterioris priores contrarias abrogant.*)

Pac. 877; Howard v. Hulbert, 63 Kan. 793, 66 Pac. 1041, 88 Am. St. Rep. 267. In the latter case the court says that "we think the court ought to assume, at least in the absence of inherent evidence to the contrary, that the legislature, in enacting a general law purporting to be of general application, did so in view of this pro-

vision of the constitution, and intended it to have such general application, and intended thereby to substitute it for all prior laws, special as well as general." p. 797.

³⁹ Pearce v. Mason County, 99 Ky. 857, 35 S. W. 1122.

⁴⁰ State v. Slover, 134 Mo. 10, 31 S. W. 1054, 34 S. W. 1102.

⁴¹ Ante, § 247; Davis v. Whidden,

Where there is an irreconcilable conflict between different sections or parts of the same statute the last words stand, and those which are in conflict with them, so far as there is a conflict, are repealed;⁴² that is, the part of a statute later in position in the same act or section is deemed later in time, and prevails over repugnant parts occurring before, though enacted and to take effect at the same time.⁴³ This rule is applicable where no reasonable construction will harmonize the parts. It is presumed that each part of a statute is intended to co-act with every other part; that no part is intended to antagonize the general purpose of the enactment. To ascertain the legislative intent every part of an act, and other acts *in pari materia*, are to be considered. One part of an act may restrict another part — an early section a later, and *vice versa*; but if one part is so out of line with other parts and the general purpose of the act that it can only operate by wholly neutralizing some other part, then the latter provision is supreme as expressing the latest will of the lawmaker. Hence, it is a rule that where the proviso of an act is directly repugnant to the purview the latter is repealed by it.⁴⁴ Statutes speak from the time they take effect, and from that time they have posteriority.⁴⁵ If passed to take effect at a future day, they are to be construed, as a general rule, as if passed on that day and ordered to take immediate effect.⁴⁶ But, as

117 Cal. 618, 49 Pac. 766; State v. Halliday, 68 Ohio St. 165, 57 N. E. 1097; Aldrich v. Columbia Ry. Co., 89 Ore. 263, 64 Pac. 455.

⁴² Albertson v. State, 9 Neb. 429.

⁴³ *Ante*, § 268; Bac. Abr., tit. Statutes, D.; State v. Davis, 70 Md. 287; Harrington v. Rochester, 10 Wend. 550; Branagan v. Dulaney, 8 Colo. 408; Powers v. Barney, 5 Blatchf. 202, Fed. Cas. No. 11,861; Southwark Bank v. Commonwealth, 26 Pa. St. 446, 449; Elliott v. Lochnane, 1 Kan. 185; Gibbons

v. Brittenum, 56 Miss. 232. See Thomas v. Collins, 58 Mich. 64, 24 N. W. 553.

⁴⁴ Attorney-General v. Chelsea Water Works Co., Fitzgib. 195; Farmers' Bank v. Hale, 59 N. Y. 53.

⁴⁵ *Ante*, § 175; State v. Edwards, 136 Mo. 360, 38 S. W. 73.

⁴⁶ Rice v. Ruddiman, 10 Mich. 125; Harrington v. Harrington's Est., 53 Vt. 649; Metropolitan Bd. of Health v. Schmader, 10 Abb. Pr. (N. S.) 205.

between two acts, it has been held that one passed later and going into effect earlier will prevail over one passed earlier and going into effect later. Thus an act passed April 16th and in force April 21st was held to prevail over an act passed April 9th and in effect July 4th of the same year.⁴⁷ And an act going into effect immediately has been held to prevail over an act passed before but going into effect later.⁴⁸ Where two acts come into operation on the same day, and are repugnant, the one last approved repeals the other,⁴⁹ unless a different intention is expressed.⁵⁰ X The relative time of approval may be ascertained from testimony,⁵¹ and, in the absence of any evidence on the ques-

✓ ⁴⁷ *Dewey v. Des Moines*, 101 Iowa, 416, 70 N. W. 605. And see to same effect, *Dowty v. Pitwood*, 23 Mont. 113, 57 Pac. 727; *State v. Newark*, 57 N. J. L. 298, 30 Atl. 543.

⁴⁸ *Belding Land & Imp. Co. v. Belding*, 128 Mich. 79, 87 N. W. 113; *Board of Education v. Tafoya*, 6 N. M. 292, 27 Pac. 616; *Heilig v. Puyallup*, 7 Wash. 29, 34 Pac. 164. In the latter case some stress was laid on the fact that the act going into immediate effect was passed with an emergency clause. Says the court: "But we are also of opinion that where two conflicting acts upon the same subject-matter are passed at the same session of the legislature, and their conflict is such that they cannot be harmonized and stand together, and one of them contains an emergency clause and the other does not, that one containing the emergency clause must be taken to overcome the other. The simple fact of there being an emergency clause would tend to show that the subject-matter of the act was more clearly and pointedly before the

legislature than the subject-matter of the other act."

⁴⁹ *State v. Davis*, 70 Md. 237, 16 Atl. 529; *Socorro County Com'rs v. Leavitt*, 4 N. M. 37, 13 Pac. 759; *Bailey v. Drane*, 96 Tenn. 16, 33 S. W. 573; *Rex v. Middlesex*, 2 B. & Ad. 818.

⁵⁰ *The Southwark Bank v. Commonwealth*, 26 Pa. St. 446. In this case it appeared that the legislature repealed a part of a bill pending before the governor, and he approved the repealing statute. *Held*, that he had no power to reinstate the repealed provision by subsequently signing the act in which it was contained.

⁵¹ *Straus v. Heiss*, 48 Md. 292; *Gardner v. Collector*, 6 Wall. 499, 18 L. Ed. 890. In *Mead v. Bagnall*, 15 Wis. 156, it was held that when the legislative intent is to be inferred from the priority of one act to another, regard must be had to the dates of approval of the acts and not to their dates of publication. The court say: "It is true that general laws must be published before they can take effect,

tion, they will be presumed to have been approved in numerical order.⁵²

The legislature of Washington passed an act in regard to death warrants and their execution which repealed the old law on the subject and was to go into effect on June 12, 1901. On that day the legislature in special session passed an act repealing the act referred to and provided that it should go into effect immediately "for the purpose of preventing the act hereby repealed from ever becoming operative for any purpose." It was held that the repealing act was in effect from the first moment of June 12th, that the act repealed was never in force, and consequently that the old law in regard to death warrants remained in force.⁵³

§ 281 (161). **Effect where different statutes are incorporated into a revision.**—Where two statutes *in pari materia*, originally enacted at different periods of time, are subsequently incorporated in a revision and re-enacted in substantially the same language, with the design to accomplish the purpose they were originally intended to produce, the times when they first took effect will be ascertained by the courts, and effect will be given to that which was the latest declaration of the will of the legislature, if they are not harmonious.⁵⁴ An existing statute is not to be consid-

but that does not make the printer a part of the law-making power, nor enable him, by delaying the publication of one law longer than that of another which was passed at the same time, to change the relations of the two upon the point of priority."

⁵² *Straus v. Heiss*, 48 Md. 292; *Metropolitan Board of Health v. Schmades*, 10 Abb. Pr. (N. S.) 205. See *Thomas v. Collins*, 58 Mich. 64, 24 N. W. 553; *Socorro County Com'rs v. Leavitt*, 4 N. M. 37, 12 Pac. 759; *ante*, § 180; *State v. Davis*, 70 Md. 237, 16 Atl. 529.

⁵³ *In re Boyce*, 25 Wash. 612, 66 Pac. 54. See also to same effect, *Turnipseed v. Jones*, 101 Ala. 593, 14 So. 377.

⁵⁴ *Winn v. Jones*, 6 Leigh, 74; *Blackford v. Hurst*, 26 Gratt. 206; *Hurley v. Town of Texas*, 20 Wis. 638; *United States v. Bowen*, 100 U. S. 508, 25 L. Ed. 631; *Vietor v. Arthur*, 104 U. S. 498, 26 L. Ed. 633; *Mobile Savings Bank v. Patty*, 16 Fed. 751; *Lamar v. Allen*, 108 Ga. 158, 33 S. E. 958; *Commonwealth v. Railroad Companies*, 95 Ky. 60, 23 S. W. 868; *Mette v. Feltgen*, 148 Ill. 357, 36 N. E. 81; *Lyon v. Ogden*,

ered as original because it is embodied in a revision, and therefore is not to be construed on the theory that none of its provisions had been in effect prior thereto. The appearance of such a statute in the form and body of a revision has no other effect than to continue it in force.⁵⁶ Where a revision was made in part by the mere compilation of prior statutes not re-enacted and in part of statutes compiled and re-enacted, it was held that a re-enacted section, of earlier origin, would prevail over a section of later origin not re-enacted.⁵⁶

§ 282 (162). **Effect of repeal in general.**—The general rule is that when an act of the legislature is repealed without a saving clause, it is considered, except as to transactions past and closed, as though it had never existed.⁵⁷ This is not true in an absolute sense, nor without exception, unless it is provided that the repealed statute cannot be revived by the repeal of the repealing statute. A repealed law is indefinitely suspended while the repealing statute is in force. When that statute is repealed its repealing force is spent, and the one which is repealed thereupon comes again into operation.⁵⁸ This revival would not ensue if the repeal had the effect of absolute extinguishment.⁵⁹ In the interpretation of statutes, clauses which have been repealed may still be considered in construing the provisions that remain in force.⁶⁰ Where a doubt exists as to the meaning

⁵⁵ Me. 874, 27 Atl. 258; Pool v. Brown, 98 Mo. 675, 11 S. W. 748.

⁵⁶ City of St. Louis v. Alexander, 23 Mo. 509; City of Cape Girardeau v. Riley, 52 id. 428, 14 Am. Rep. 427; State ex rel. Att'y-Gen'l v. Heidorn, 74 Mo. 410. See *ante*, § 288.

⁵⁷ Bryson v. Johnson County, 100 Mo. 76, 18 S. W. 239.

⁵⁸ Holcomb v. Boynton, 151 Ill. 294, 37 N. E. 1031, 49 Ill. App. 503; Curran v. Owens, 15 W. Va. 208; Surtees v. Ellison, 9 B. & C. 750; Butler v. Palmer, 1 Hill, 824; Ala-

bama Med. College v. Muldon, 46 Ala. 603; Musgrove v. Vicksburg, etc. R. R. Co., 50 Miss. 677; McQuilkien v. Doe ex dem. Stoddard, 8 Blackf. 581; Hunt v. Jennings, 5 id. 195; Potter's Dwarries, 160.

⁵⁹ *Post*, § 288; Bac. Abr., tit. Statute, D.; Phillips v. Hopwood, 10 B. & C. 89; Brinkley v. Swicegood, 65 N. C. 626; Smith v. Hoyt, 14 Wis. 252.

⁶⁰ Home Ins. Co. v. Taxing Dist., 4 Lea, 644.

⁶¹ Bank for Savings v. The Col-

of a statute, the pre-existing law, and the reason and purpose of the new enactment, are considerations of great weight.⁶¹ It is more accurate to say that after it is repealed it is, as regards its operative effect, considered as if it had never existed, except as to matters and transactions past and closed.⁶² The repeal of an exception extends the purview.⁶³

§ 283 (163). **Effect on inchoate rights.**—Rights depending on a statute and still inchoate, not perfected by final judgment or reduced to possession, are lost by repeal or expiration of the statute.⁶⁴ This rule applies to mechanics' liens given by statute where the requisite proceedings to fix the lien have not been completed at the date of the re-

lector, 3 Wall. 495, 18 L. Ed. 207; *Crow Dog, Ex parte*, 109 U. S. 556, 8 S. C. Rep. 396, 27 L. Ed. 1030; *Bates v. Clark*, 95 U. S. 204, 24 L. Ed. 471; *Attorney-General v. Lamplough, L. R. 3 Ex. D. 223*; *Commonwealth v. Bailey*, 13 Allen, 541; *Flanders v. Merrimack*, 48 Wis. 567; *Whitcomb v. Standard Oil Co.*, 153 Ind. 518, 55 N. E. 440.

⁶¹ *Smythe v. Fiske*, 23 Wall. 374, 380, 23 L. Ed. 47; *Heydon's Case*, 3 Rep. 7b.

⁶² *Attorney-General v. Lamplough, L. R. 3 Ex. Div. 223*.

⁶³ *Smith v. Hoyt*, 14 Wis. 252; *Goodno v. Oshkosh*, 31 id. 127; *Bank for Savings v. The Collector*, 3 Wall. 495, 18 L. Ed. 207.

⁶⁴ *Bechtol v. Cobaugh*, 10 S. & R. 121; *Van Inwagen v. Chicago*, 61 Ill. 81; *Town of Belvidere v. Warren R. R. Co.*, 34 N. J. L. 193; S. C., 35 id. 587; *Musgrove v. Vicksburg, etc. R. R. Co.*, 50 Miss. 677; *People v. Livingston*, 6 Wend. 526; *Tivey v. People*, 8 Mich. 128; *Knox v. Baldwin*, 80 N. Y. 610; *Hampton v. Commonwealth*, 19 Pa. St. 329;

State v. Baldwin, 45 Conn. 184; *Bay City, etc. R. R. Co. v. Austin*, 21 Mich. 390; *Bennet v. Hargus*, 1 Neb. 419; *Williams v. Middlesex*, 4 Met. 76; *Oriental Bank v. Freese*, 18 Me. 109, 36 Am. Dec. 701; *Bailey v. Mason*, 4 Minn. 546; *The Schooner Rachel v. United States*, 6 Cr. 329, 3 L. Ed. 239; *Coffin v. Rich*, 45 Me. 507, 71 Am. Dec. 559; *Gregory v. German Bank*, 3 Colo. 382, 25 Am. Rep. 760; *Gaul v. Brown*, 53 Me. 496; *Curtis v. Leavitt*, 15 N. Y. 152; *Turnipseed v. Jones*, 101 Ala. 593, 14 S. E. 377; *Callahan v. Jennings*, 16 Colo. 471, 27 Pac. 1055; *Miller v. Hageman*, 114 Iowa, 195, 86 N. W. 281; *Nations v. Lovejoy*, 80 Miss. 401, 31 So. 811; *Wirt v. Supervisors*, 90 Hun, 205, 35 N. Y. S. 887; *Detroit v. Chapin*, 108 Mich. 136, 66 N. W. 587, 37 L. R. A. 391; *Lawrence County v. New Castle*, 18 Pa. Supr. Ct. 313. See *Restall v. London, etc. Ry. Co.*, L. R. 3 Ex. 141, which is dissented from in *Butcher v. Henderson*, L. R. 3 Q. B. 335. See, also, *Morgan v. Thorne*, 7 M. & W. 400.

peal.⁶⁵ A sale under a decree for a mechanic's lien, made after the repeal of the statute, was held void, though the decree was entered before such repeal.⁶⁶ An assessment of taxes on corporate stock was made under a statute which was subsequently repealed. The collection of the taxes was regulated by another law. The repeal of the statute under which the assessment had been made was not held to affect it. The assessment was closed and ended, and therefore not subject to the rule applicable to pending proceedings when the law under which they were commenced has been repealed.⁶⁷ There was a sentence of condemnation of a vessel for trading contrary to a temporary act of congress; the vessel had been sold and the proceeds paid over to the government while the law was in force. Pending an appeal from the sentence the act expired. It was held that the sentence could not, under such circumstances, be affirmed after the expiration of the law, and restitution was ordered.⁶⁸ An informer who commences a *qui tam* action under a penal statute does not thereby acquire a vested right to the forfeiture; his claim to the penalty is inchoate, and cannot be fixed except by judgment. The repeal of the statute before judgment prevents the imperfect right from being consummated. It matters not whether the whole penalty when received is given to the public or the informer, or is divided between them.⁶⁹ The repeal of a statute giving a lien for taxes destroys the lien.⁷⁰

§ 284 (164). Effect on vested rights.— When a right has arisen on a contract, or a transaction in the nature of a contract authorized by a statute, and has been so far perfected that nothing remains to be done by the party asserting such right, the repeal of the statute will not affect it or

⁶⁵ Bailey v. Mason, 4 Minn. 546. ton v. United States, 5 Cr. 281, 3 L.

⁶⁶ Holcomb v. Boynton, 151 Ill. 294, 37 N. E. 1031. Ed. 101.

⁶⁷ Town of Belvidere v. Warren ⁶⁹ Bank of St. Marys v. State, 12

R. R. Co., 84 N. J. L. 198. Ga. 475. ⁷⁰ Gull River Lumber Co. v. Lee,

⁶⁸ The Schooner Rachel v. United 7 N. D. 135, 73 N. W. 430.

States, 6 Cr. 829, 3 L. Ed. 239; Yea-

an action for its enforcement. It has become a vested right which stands independently of the statute.⁷¹ A contractor for grading streets was authorized by the existing law to sue delinquent abutters for unpaid assessments. This right of action was held a part of the contract and not taken away by repeal of the law creating it.⁷² Causes of action barred by the statute of limitations are not revived by a repeal of the statute.⁷³ The repeal of a statute giving a lien for advances of money for certain purposes will not affect the lien as to such advances as were made prior thereto.⁷⁴ Rights that pass and become vested under the existing law are supposed to be beyond the control of the state through its legislature.⁷⁵ A mere change of the law does not divest or impair rights of property acquired previously, even though the legislature intended the new law so to operate.⁷⁶ A law can be repealed by the law-giver; but the rights which have been acquired under it while it was in force do not thereby cease. It would be an act of absolute injustice to abolish with a law all the effects which it had produced.

⁷¹ *Pacific Mail Steamship Co. v. Joliffe*, 2 Wall. 450, 17 L. Ed. 805; *Bibb v. Hall*, 101 Ala. 79, 14 So. 98; *Thompson v. West*, 59 Neb. 677, 82 N. W. 18, 49 L. R. A. 337; *Hanscom v. Meyer*, 61 Neb. 798, 86 N. W. 881; *Florence Gas, Elec. L. & P. Co. v. Hanby*, 101 Ala. 15, 13 So. 343; *Beavers v. Myar*, 68 Ark. 333, 58 S. W. 40; *Commonwealth v. Newcomb*, 109 Ky. 18, 58 S. W. 445; *People v. Common Council*, 140 N. Y. 300, 35 N. E. 485, 37 Am. St. Rep. 563; *Ewing v. Van Wagenen*, 6 Wash. 39, 32 Pac. 1009; *State v. Bridges*, 22 Wash. 64, 60 Pac. 60, 79 Am. St. Rep. 914.

⁷² *Creighton v. Pragg*, 21 Cal. 115.

⁷³ *Cassity v. Storms*, 1 Bush, 452; *Right v. Martin*, 11 Ind. 123; *Cooley's Const. L.* *365; *Whitney v.*

Wegler, 54 Minn. 235, 55 N. W. 927; *Hulbert v. Clark*, 128 N. Y. 295, 28 N. E. 638, 14 L. R. A. 59; *Boorman v. Juneau County*, 76 Wis. 550, 45 N. W. 675.

⁷⁴ *Commissioners v. Northern Bank*, 1 Met. (Ky.) 174.

⁷⁵ *Rice v. R. R. Co.*, 1 Black, 358, 17 L. Ed. 147; *Mitchell v. Doggett*, 1 Fla. 356; *Naught v. Oneal*, 1 Ill. 86; *James v. Dubois*, 16 N. J. L. 285; *Den v. Robinson*, 5 id. 689; *McMeehan v. Mayor, etc.*, 2 H. & J. 41; *Davis v. Minor*, 1 How. (Miss.) 188, 90 Am. Dec. 358; *Taylor v. Rushing*, 2 Stew. (Ala.) 160; *Graham, Ex parte*, 18 Rich. 277; *Lincoln County v. Oneida County*, 80 Wis. 267, 50 N. W. 844.

⁷⁶ *Rock Hill College v. Jones*, 47 Md. 1, 17.

This is a principle of general jurisprudence; but a right to be within its protection must be a vested right. It must be something more than a mere expectation based upon an anticipated continuance of the existing law. It must have become a title, legal or equitable, to the present or future enjoyment of property, or to the present or future enforcement of a demand, or a legal exemption from a demand made by another.⁷⁷ If, before rights become vested in particular individuals, the convenience of the state induces amendment or repeal of the laws, these individuals have no cause to complain.⁷⁸ The legislature, unrestrained by any constitutional provision, may grant an exclusive franchise,⁷⁹ but the grant will be strictly construed and must be clearly expressed.⁸⁰ It is competent for the legislature, after granting to one person or a corporation a franchise which affects the rights of the public, to grant a similar franchise to another person or corporation, though the use of the latter should impair or even destroy the value of the first franchise; and this grant does not depend on a reservation of the power in the original grant.⁸¹ Nothing but plain English words will grant an exclusive franchise, and thus create a monopoly.⁸² The repeal of a statute after judgment will not defeat an appeal previously taken.⁸³ And if the

⁷⁷ *Id.*; *Cooley*, Const. Lim. 359; *Merrill v. Sherburne*, 1 N. H. 213; *Wilderman v. Baltimore*, 8 Md. 551; *State v. Warren*, 28 *id.* 338; *Worthen v. Ratcliffe*, 42 Ark. 330; *James v. Dubois*, 16 N. J. L. 285; *Graham v. Chicago, etc. R. R. Co.*, 53 Wis. 473; *Grey v. Mobile Trade Co.*, 55 Ala. 387, 28 Am. Rep. 729; *Streubel v. Milwaukee, etc. R. R. Co.*, 12 Wis. 67; *Aspinwall v. Daviess Co.*, 22 How. 364, 16 L. Ed. 296; *Bennet v. Hargus*, 1 Neb. 419; *Kent's Com.* 455; 2 Story on Const., § 1899. See *Wolfe v. Henderson*, 28 Ark. 304.

⁷⁸ *Merrill v. Sherburne*, 1 N. H. 213.

⁷⁹ *Slaughter-House Cases*, 16 Wall. 36, 21 L. Ed. 894.

⁸⁰ *Id.*

⁸¹ *The Charles River Bridge v. The Warren Bridge*, 11 Pet. 420, 9 L. Ed. 773, 938; *Mohawk Bridge Co. v. Utica, etc. R. R. Co.*, 6 Paige, 554; *Oswego Bridge Co. v. Fish*, 1 Barb. Ch. 547; *Fort Plain Bridge Co. v. Smith*, 30 N. Y. 44.

⁸² *Pennsylvania R. R. Co. v. Canal Commissioners*, 21 Pa. St. 22; *Richmond R. R. Co. v. Louisa R. R. Co.*, 13 How. 71, 14 L. Ed. 55; *Chenango Bridge Co. v. Binghamton Bridge Co.*, 27 N. Y. 87.

⁸³ *Backes v. Dant*, 55 Ind. 181.

statute be essential to that judgment, its repeal or expiration after the appeal will necessitate a reversal of the judgment.⁸⁴

A statutory right is to be distinguished from the remedy for its enforcement. But after the right has vested it cannot be taken away by new legislation directly against the right nor indirectly by taking away the remedy.⁸⁵ A statute of Tennessee provided that foreign insurance companies doing business in the state should file with the insurance commissioner a power of attorney authorizing the secretary of state to acknowledge service of process on behalf of such companies, and provided that such service should be binding, though the company had retired or been excluded from the state. This statute was repealed and a different method provided. It was held that the provisions of the earlier statute became a part of contracts made while it was in force and that the secretary of state could bind a company which had retired from the state before the repeal took place, by an acknowledgment of service made after such repeal.⁸⁶ A statute made it a duty to provide fire-escapes and declared that failure to comply with the statute should be deemed negligence. It was held that a repeal of the statute did not affect a right of action which had occurred before such repeal and was founded on such failure.⁸⁷ The remedy may be changed.⁸⁸ And of this nature are stat-

⁸⁴ *The Schooner Rachel v. United States*, 6 Cr. 329, 3 L. Ed. 239; *Yeaton v. United States*, 5 Cr. 281, 3 L. Ed. 101.

⁸⁵ *Cooley's Const. Lim.* *361; *Lessley v. Phipps*, 49 Miss. 790; *Birdsall v. Wheeler*, 58 Conn. 429, 20 Atl. 607; *Dow v. Electric Co.*, 68 N. H. 59, 31 Atl. 22.

⁸⁶ *D'Arcy v. Mut. Life Ins. Co.*, 108 Tenn. 567, 69 S. W. 768.

⁸⁷ *Gorman v. McAidle*, 67 Hun, 484, 22 N. Y. S. 479.

⁸⁸ *The Hickory Tree Road*, 48 Pa.

St. 189; *Farmer v. People*, 77 Ill. 322; *Knoup v. Piqua Bank*, 1 Ohio St. 603; *Danforth v. Smith*, 23 Vt. 247; *Cooley's Const. Lim.* *287, 361, 362; *Colby v. Dennis*, 36 Me. 9, 13; *Musgrove v. Vicksburg, etc. R. R. Co.*, 50 Miss. 677; *Dean v. Mellard*, 15 C. B. (N. S.) 19; *Linton v. Blakeney, etc. Society*, 3 H. & C. 853; *Templeton v. Horne*, 82 Ill. 491; *Harris v. Townshend*, 56 Vt. 716; *Mechanics' & Farmers' Bank's Appeal*, 31 Conn. 63; *Treasurer v. Wygall*, 46 Tex. 447; *Stocking v. Hunt*, 3 Denio, 274; *Su-*

utes changing the rules of evidence⁸⁰ or the competency of witnesses.⁸⁰ New statutes may be valid which take away defenses based on irregularities and informalities,⁸¹ by validating contracts executed without compliance with a statute,⁸² or in violation of some statutory prohibition.⁸³ When a remedy upon a contract not unlawful is prohibited, a repeal of the statute will restore the remedy.⁸⁴ An act which forbids a corporation to set up the defense of usury repeals as to such corporation the laws against usury, and a repeal of such laws will cut off the defense of usury upon contracts previously made.⁸⁵ An act in regard to taxation declared that mortgages on lands in more than one county should be void. It was held that, as the object of the statute was to protect the public revenue, the intent of the statute was that such mortgages should be absolutely void and that a repeal of the act would not have the effect of validating such mortgages.⁸⁶

§ 285 (165). **Effect on powers, jurisdiction and pending proceedings.**—Powers derived wholly from a statute are extinguished by its repeal. All acts done under a statute

pervisors v. Briggs, *id.* 173; Matter of Palmer, 40 N. Y. 561; Dismukes v. Stokes, 41 Miss. 431; Mastronada v. State, 60 Miss. 86. See Newsom v. Greenwood, 4 Ore. 119.

⁸⁰ Herbert v. Easton, 48 Ala. 547; Stephenson v. Osborne, 41 Miss. 119, 50 Am. Dec. 358; Journeay v. Gibson, 56 Pa. St. 57, 60; Fogg v. Holcomb, 64 Iowa, 621, 21 N. W. 111.

⁸⁰ Laughlin v. Commonwealth, 13 Bush, 261.

⁸¹ Cooley's Const. Lim., *371 et seq.

⁸² Dulany's Lessee v. Tilghman, 6 G. & J. 461; Andrews v. Russell, 7 Backf. 474; Parmelee v. Lawrence, 48 Ill. 331; Webber v. Howe, 36 Mich. 150; Journeay v. Gibson, 56 Pa. St. 57; Carpenter v. Pennsylvania, 17 How. 456, 15 L. Ed. 127; Es-

tate of Sticknoth, 7 Nev. 223; Dentzel v. Waldie, 30 Cal. 138.

⁸³ Gibson v. Hibbard, 13 Mich. 215; Ewell v. Daggs, 108 U. S. 143, 2 S. C. Rep. 408, 27 L. Ed. 682; Syracuse Bank v. Davis, 16 Barb. 188; Harris v. Rutledge, 19 Iowa, 388, 87 Am. Dec. 441; State v. Norwood, 12 Md. 195; State v. Newark, 25 N. J. L. 399; Lewis v. McElvain, 16 Ohio, 347; Savings Bank v. Allen, 28 Conn. 97; Cooley's Const. Lim. *374 et seq. See New York, etc. R. R. Co. v. Van Horn, 57 N. Y. 473.

⁸⁴ Johnson v. Meeker, 1 Wis. 436.

⁸⁵ Ewell v. Daggs, 108 U. S. 143, 2 S. C. Rep. 408, 27 L. Ed. 682.

⁸⁶ Denny v. McCown, 34 Ore. 47, 54 Pac. 952.

whilst it was in force are good; but if a proceeding is in progress, *in fieri*, when the statute is repealed, and the powers it confers cease, it fails, for it cannot be pursued.⁹⁷ It is held that a statutory right of appeal may be taken away, even while an appeal is pending.⁹⁸ Jurors drawn and designated according to law to serve for a term of court were

⁹⁷ Bac. Abr., tit. Statute, D.; Road in Hatfield Township, 4 Yeates, 393; Veats v. Danbury, 37 Conn. 412; Stoever v. Immell, 1 Watts, 258; Commonwealth v. Beatty, id. 382; Gilleland v. Schuyler, 9 Kan. 569; Church v. Rhodes, 6 How. Pr. 281; Smith v. Arapahoe Dist. Ct., 4 Colo. 235; State v. Brookover, 22 W. Va. 214; New London Northern R. R. Co. v. Boston, etc. R. R. Co., 102 Mass. 389; Springfield v. Commissioners, 6 Pick. 501; McRee v. M'Le-more, 8 Heisk. 440; Downs v. Town of Huntington, 35 Conn. 588; Mac-nawhoo Plantation v. Thompson, 36 Me. 365; Illinois, etc. Canal v. Chicago, 14 Ill. 834; Uwchlan Town-ship Road, 30 Pa. St. 156; Hunt v. Jennings, 5 Blackf. 195; Williams v. Middlesex, 4 Met. 76; Stephen-son v. Doe, 8 Blackf. 508, 46 Am. Dec. 489; James v. Dubois, 16 N. J. L. 285; Petition of Fenelon, 7 Pa. St. 178; South Carolina v. Gaillard, 101 U. S. 433, 25 L. Ed. 937; Hamp-ton v. Commonwealth, 19 Pa. St. 329; Commonwealth v. Standard Oil Co., 101 Pa. St. 119; Holmes v. French, 68 Me. 525; Warne v. Beres-ford, 2 M. & W. 848; Bucher v. Henderson, L. R. 3 Q. B. 335; Todd v. Landry, 5 Martin, 459, 12 Am. Dec. 479; Callahan v. Jennings, 16 Colo. 471, 27 Pac. 1055; Western Union Tel. Co. v. Lumpkin, 99 Ga. 647, 26 S. E. 74; State v. Order of Elks, 69 Miss. 895, 13 So. 255; State Rev. Agent v. Hill, 70 Miss. 106, 11

So. 789; State v. Fragiacomio, 71 Miss. 417, 15 So. 798; Wooding v. Puget Sound Nat. Bank, 11 Wash. 527, 40 Pac. 228.

The city of Evansville passed an ordinance for the improvement of streets pursuant to a power given in the charter. It was held that the subsequent repeal of the sec-tion conferring the power did not affect the ordinance. Chamber-lain v. Evansville, 77 Ind. 542; Dashiell v. Baltimore, 45 Md. 615. In March, 1875, a trader committed an act of bankruptcy, upon which a commission might have issued under the statutes then in force. On May 1st these statutes were re-pealed. On May 2d the repealing act was repealed and the former acts thereby revived. In July a commission of bankruptcy issued. Held, it was supported by the act of bankruptcy in March. Lord Tenterden: "We find certain stat-utes in force in March, 1825, when the act of bankruptcy was com-mitted, and we find the same stat-utes in force in July when the commission issued. It appears to me that the case is not affected by anything that passed in the inter-val. The 5 Geo. IV., ch. 98, having been repealed, is to be considered, as far as this question is concerned, as if it had never existed." Phillips v. Hopwood, 10 B. & C. 39.

⁹⁸ Callahan v. Jennings, 16 Colo. 471, 27 Pac. 1055. And see Lake

held to continue to be legal jurors for the term, though *during* the term a new law went into effect prescribing a new method of drawing jurors.⁹⁹ A grand jury summoned before the repeal of a law by a revision, which changes the qualifications and method of drawing grand jurors, cannot be impaneled after the repeal takes effect.¹ If there has been a change or alteration or repeal of the law applicable to the rights of the parties, after the rendition of judgment, and pending an appeal, the case must be heard and decided in the appellate court, according to the existing law.² When a cause of action is founded on a statute, a repeal of the

Erie & W. Ry. Co. v. Walkins, 157 Ind. 600, 62 N. E. 443. See *post*, § 717.

⁹⁹ *Welty v. Lake Superior, etc. Ry. Co.*, 100 Wis. 128, 75 N. W. 1022; *Ray v. Lake Superior, etc. Ry. Co.*, 99 Wis. 617, 75 N. W. 420.

¹ *Clark v. United States*, 19 App. Cas. (D. C.) 295. And see *State v. Thomas*, 30 La. Ann. 603.

² *Musgrove v. Vicksburg, etc. R. R. Co.*, 50 Miss. 677; *Lewis v. Foster*, 1 N. H. 61; *Speckert v. Louisville*, 78 Ky. 287; *State v. Daley*, 29 Conn. 272; *Atwell v. Grant*, 11 Md. 104; *Keller v. State*, 12 id. 325, 71 Am. Dec. 596; *Price v. Nesbitt*, 29 Md. 263; *Mayor of Annapolis v. State*, 30 id. 112; *Wade v. St. Mary's School*, 43 id. 178; *Hartung v. People*, 22 N. Y. 95; *United States v. The Peggy*, 1 Cr. 103, 2 L. Ed. 49; *Sheppard v. State*, 1 Tex. App. 522; *Vance v. Rankin*, 194 Ill. 625, 62 N. E. 807, 88 Am. St. Rep. 173; *McNabb v. Tonica*, 108 Ill. App. 150; *Wikel v. Commissioners*, 120 N. C. 451, 27 S. E. 117; *Sherman v. Langham*, 92 Tex. 13, 40 S. W. 140, 42 S. W. 961, 39 L. R. A. 258, 260; *The Schooner Rachel v. United States*,

6 Cranch, 329, 3 L. Ed. 239; *Yeaton v. United States*, 5 Cranch, 281, 3 L. Ed. 101. In *Vance v. Rankin*, 194 Ill. 625, 62 N. E. 807, 88 Am. St. Rep. 173, the court says: "The effect of the repeal of a statute is to obliterate the statute repealed as completely as if it had never been passed, and it must be considered as a law that never existed, except for the purposes of those actions or suits which were commenced, prosecuted and concluded while it was an existing law. Pending judicial proceedings based upon a statute cannot proceed after its repeal. This rule holds true until the proceedings have reached a final judgment in the court of last resort, for that court, when it comes to pronounce its decision, conforms it to the law then existing, and may therefore reverse a judgment which was correct when pronounced in the subordinate tribunal from whence the appeal was taken, if it appears that pending the appeal a statute which was necessary to support the judgment of the lower court has been withdrawn by an absolute repeal."

statute before final judgment destroys the right, and a judgment is not final in this sense so long as the right of exception thereto remains.³ While a case was pending on writ of error, the statute on which the jurisdiction of the lower court depended was repealed. The court inadvertently reversed the judgment and remanded the cause. On its attention being called to the statute, it recalled the mandate, set aside the judgment of reversal and dismissed the writ of error.⁴ Where a jurisdiction conferred by statute is prohibited by a subsequent statute, or the law conferring it is repealed, the jurisdiction ceases and causes pending at the time fail, and no costs are recoverable by either party unless saved by provisions of the repealing law.⁵ If pursued the proceedings will be void,⁶ but they may subsequently be validated in certain cases, as when intended to establish a public rather than a private charge or liability.⁷ Jurisdiction may be taken away by repeal of the statutes conferring

pp. 627, 628. See *Dunham v. Anders*, 128 N. C. 207, 38 S. E. 832, 88 Am. St. Rep. 668.

³ *Western Union Tel. Co. v. Lumpkin*, 99 Ga. 647, 26 S. E. 74; *Balch v. Detroit*, 109 Mich. 258, 67 N. W. 122.

⁴ *United States v. Kelly*, 97 Fed. 460, 38 C. C. A. 275.

⁵ *Hollingsworth v. Virginia*, 8 Dall. 878; *Merchants' Ins. Co. v. Ritchie*, 5 Wall. 541, 18 L. Ed. 540; *United States v. Boisdore*, 8 How. 113, 12 L. Ed. 1009; *Grant v. Grant*, 12 S. C. 29, 82 Am. Rep. 506; *McNulty v. Batty*, 10 How. 72, 18 L. Ed. 333, 576; *Ex parte McCardle*, 7 Wall. 506, 19 L. Ed. 264; *Assessors v. Osbornes*, 9 Wall. 567, 19 L. Ed. 748; *United States v. Tynen*, 11 Wall. 88, 20 L. Ed. 153; *Baltimore, etc. R. R. Co. v. Grant*, 98 U. S. 398, 25 L. Ed. 231; *Rice v. Wright*, 46 Miss. 679; *Lamb v. Schottler*, 54

Cal. 319; *Smith v. Arapahoe Dist. Ct.*, 4 Colo. 235; *Wade v. St. Mary's Industrial School*, 43 Md. 178; *Saco v. Gurney*, 34 Me. 14; *Miller's Case*, 1 W. Black. 451; *Yeaton v. United States*, 5 Cr. 281, 8 L. Ed. 101; *Springfield v. Commissioners of H.*, 6 Pick. 501; *Commonwealth v. Marshall*, 11 id. 350, 22 Am. Dec. 877; *Commonwealth v. Kimball*, 21 Pick. 373; *Thayer v. Seavey*, 11 Me. 284; *Cummings v. Chandler*, 26 Me. 453; *Texas Mexican Ry. Co. v. Jarvis*, 80 Tex. 456, 15 S. W. 1089; *Fairchild v. United States*, 91 Fed. 297.

⁶ *North Canal Street*, 10 Watts, 351, 86 Am. Dec. 185; *Church v. Rhodes*, 6 How. Pr. 281; *Morgan v. Thorne*, 7 M. & W. 400; *Petition of Fenelon*, 7 Pa. St. 173; *Bank of Hamilton v. Dudley*, 2 Pet. 492, 7 L. Ed. 496.

⁷ *In re Pennsylvania Hall*, 5 Pa.

it by necessary implication as well as by express words.⁸ An application was made to the court of quarter sessions for the discharge of a prisoner under an insolvent debtor act, and every requisite was complied with by the debtor; but the court voluntarily, and without his application, adjourned the matter to a subsequent day, before which the act was repealed. On motion for a *mandamus* to the sessions to proceed to discharge him, the court of king's bench refused to grant it, as no act of jurisdiction could be done by the sessions after the repeal of the statute, though the proceeding had begun before.⁹

§ 286 (166). **Effect of repeal of a penal statute.**—The repeal or expiration of a statute imposing a penalty or forfeiture will prevent any prosecution, trial or judgment for any offense committed against it while it was in force, unless the contrary is provided in the same or some other existing statute.¹⁰ Where a penal statute is so modified as to

St. 204. See Cooley's Const. Lim. *371; Plantation No. 9 v. Bean, 36 Me. 359.

⁸ Cates v. Knight, 8 T. R. 442; Crisp v. Bunbury, 8 Bing. 394; New London N. R. R. Co. v. Boston, etc. R. R. Co., 102 Mass. 386.

⁹ Rex v. Justices of London, 8 Burr. 1456; Miller's Case, 1 W. Black. 451.

¹⁰ Yeaton v. United States, 5 Cr. 281, 3 L. Ed. 101; Commonwealth v. Marshall, 11 Pick. 850, 22 Am. Dec. 377; Commonwealth v. Pattee, 12 Cush. 501; Heald v. State, 36 Me. 62; Mayers v. State, 7 Ark. 68; Roberts v. State, 2 Overt. 423; Bennett v. State, 2 Yerg. 472; Brothers v. State, 3 Cold. 201; Higginbotham v. State, 19 Fla. 557; Leftwiche's Case, 5 Rand. 657; Scutt's Case, 2 Va. Cas. 54; Bank of St. Mary's v. State, 12 Ga. 475; State v. Nutt, Phil. L. 20; Carlisle v. State, 42 Ala. 523;

Governor v. Howard, 1 Murphy, 465; State v. Banks, 12 Rich. 609; Commonwealth v. Cain, 14 Bush, 525; State v. Addington, 2 Bailey, 516; United States v. Finlay, 1 Abb. (U. S.) 364, Fed. Cas. No. 15,099; The Irresistible, 7 Wheat. 551, 5 L. Ed. 520; Duane's Case, 1 Binn. 601; Bay City, etc. R. R. Co. v. Austin, 21 Mich. 390; United States v. Six Fermenting Tubs, 1 Abb. (U. S.) 268, Fed. Cas. No. 16,296; Mastrenada v. State, 60 Miss. 86; Mayor, etc. v. State, 30 Md. 112; Commonwealth v. Welch, 2 Dana, 330; Harrison v. Allen, Wythe (Va.), 291; Stoever v. Immell, 1 Watts, 258; Woodburn v. Western Union Tel. Co., 95 Ga. 808, 23 S. E. 116; People v. Hiller, 113 Mich. 209, 71 N. W. 630; Lindsey v. State, 65 Miss. 542, 5 So. 93, 7 Am. St. Rep. 674; Hodnett v. State, 66 Miss. 26, 5 So. 518; Westchester County v. Dressner, 23 App.

exempt a class from its operation, violations by such exempted class before such modification took effect cannot be prosecuted afterwards.¹¹ If a penal statute is repealed pending an appeal and before the final action of the appellate court, it will prevent an affirmance of a conviction, and the prosecution must be dismissed or the judgment reversed.¹² A final judgment before repeal is not affected by it.¹³ The repeal operates as a pardon of all offenses against it¹⁴ and a bar to any subsequent prosecution.¹⁵ There can be no legal con-

Div. 215, 48 N. Y. S. 953; *State v. Oliver*, 12 Wash. 547, 41 Pac. 895; *Gulf, Colo. & S. F. Ry. Co. v. Lott*, 2 Tex. Ct. App. 48; *Cleveland, Cin. C. & St. L. Ry. Co. v. Wells*, 65 Ohio St. 313, 62 N. E. 332; *Dyer v. Ellington*, 126 N. C. 941, 36 S. E. 137; *Hilliard v. Roach*, 2 Pa. Co. Ct. 174; *State v. Mansel*, 52 S. C. 468, 30 S. E. 481.

¹¹ *Commonwealth v. Welch*, 2 Dana, 330.

¹² *State v. King*, 12 La. Ann. 593; *Mouras v. The A. C. Brewer*, 17 id. 82; *Keller v. State*, 12 Md. 322, 71 Am. Dec. 596; *Lewis v. Foster*, 1 N. H. 61; *Speckert v. Louisville*, 78 Ky. 287; *Commonwealth v. Sherman*, 85 id. 686; *Union Pac. Ry. Co. v. Proctor*, 12 Colo. 194, 20 Pac. 615; *State v. Allen*, 14 Wash. 103, 44 Pac. 121; *Mahoney v. State*, 5 Wyo. 520, 42 Pac. 12, 63 Am. St. Rep. 64.

¹³ *People v. Hobson*, 48 Mich. 27, 27 N. W. 771; *State v. Addington*, 2 Bailey, 516. See *Aaron v. State*, 40 Ala. 307; *Rex v. Davis*, 1 Leach, C. C. 271; *Rex v. Heath*, 2 East P. C. 609; *Rex v. McKenzie*, R. & R. C. C. 429; *Leschi v. Territory*, 1 Wash. Ty. 18; *Saco v. Gurney*, 34 Me. 14; *Gaul v. Brown*, 53 Me. 496; *Welch v. Wadsworth*, 30 Conn. 149,

79 Am. Dec. 236; *Heald v. State*, 36 Me. 62; *Broughton v. Branch Bank*, 17 Ala. 828; *Taylor v. State*, 7 Blackf. 93; *State v. Loyd*, 2 Ind. 659; *Thompson v. Bassett*, 5 id. 535; *State v. O'Conner*, 13 La. Ann. 486; *State v. Cress*, 4 Jones (N. C.), 421; *State v. Van Stralen*, 45 Wis. 437; *State v. Campbell*, 44 id. 529; *State v. Ingersoll*, 17 Wis. 631; *Fisher v. N. Y. etc. R. R. Co.*, 46 N. Y. 644; *Calkins v. State*, 14 Ohio St. 222; *Wood v. Kennedy*, 19 Ind. 68; *State v. Fletcher*, 1 R. L. 193; *Greer v. State*, 22 Tex. 588; *Town of Belvidere v. Warren R. R. Co.*, 34 N. J. L. 193; *S. C. in error*, 35 id. 584; *Snell v. Campbell*, 24 Fed. 880; *Mulkey v. State*, 16 Tex. App. 53; *State v. Long*, 78 N. C. 571; *Hubbard v. State*, 2 Tex. App. 506; *Montgomery v. State*, id. 618; *Rood v. Chicago, etc. Ry. Co.*, 43 Wis. 146; *State v. Gumber*, 37 Wis. 298; *Union Iron Co. v. Pierce*, 4 Biss. 327; *State v. Brewer*, 22 La. Ann. 273.

¹⁴ *Wharton v. State*, 5 Cold. 1.

¹⁵ *Howard v. State*, 5 Ind. 183, 94 Am. Dec. 214; *Griffin v. State*, 30 Ala. 541; *Genkinger v. Commonwealth*, 32 Pa. St. 99; *Wall v. State*, 18 Tex. 632, 70 Am. Dec. 302.

viction for an offense unless the act be contrary to law at the time it is committed; nor can there be judgment unless the law is in force at the time of the indictment and judgment.¹⁶

Where a statute imposes a penalty for an injurious act done to the rights of others, such penalty to be recovered by the party aggrieved, it is in the nature of a satisfaction to him, as well as a punishment of the offender. In such a case the plaintiff is said to have acquired a vested right to the penalty as soon as the offense is committed, and a general repeal of the statute after action accrued does not affect that right.¹⁷ An ordinance passed pursuant to a power in a city charter is not invalidated by repeal of the provision granting the power.¹⁸ While a convict in the state prison was liable to additional punishment under a statute in force at the time of sentence and commitment, in consequence of having been twice convicted and sentenced to confinement, a statute was passed so modifying the previous statute that a convict would be liable to additional punishment only in case he had been twice discharged from imprisonment. Before the prisoner was released from confinement under his second sentence the modifying statute was repealed. It was held that such statute operated to suspend, so long as it remained in force, but not to discharge, the prisoner's liability to additional punishment.¹⁹ The repeal of a statute allowing the

¹⁶ *Commonwealth v. Marshall*, 11 Pick. 350; *Commonwealth v. McDonough*, 18 Allen, 581; *Commonwealth v. Kimball*, 21 Pick. 373; *Hartung v. People*, 22 N. Y. 95; *Pitman v. Commonwealth*, 2 Rob. (Va.) 813; *State v. Daley*, 29 Conn. 272.

¹⁷ *President, etc. of L. v. Harrison*, 9 B. & C. 524; *Company of Cutlers v. Ruslin, Skinner*, 863; *Palmer v. Conly*, 4 Denio, 374, 2 N. Y. 182; *Thompson v. Howe*, 46 Barb. 287; *Harris v. Townshend*, 56 Vt.

716; *Graham v. Chicago, etc. R. R. Co.*, 53 Wis. 473, 10 N. W. 609; *Grey v. Mobile Trade Co.*, 55 Ala. 387, 28 Am. Rep. 729. See *Union Iron Co. v. Pierce*, 4 Biss. 327; *Bay City, etc. R. R. Co. v. Austin*, 21 Mich. 390; *Hibbard v. Parmenter, etc. Co.*, 70 N. H. 156, 46 Atl. 683.

¹⁸ *Chamberlain v. Evansville*, 77 Ind. 542.

¹⁹ *Commonwealth v. Getchell*, 16 Pick. 452. See *Commonwealth v. Mott*, 21 Pick. 492.

Defendant to give bail in a criminal case pending an appeal annuls the right as to past offenses or pending cases.²⁰

§ 287 (167). **Saving clauses and general saving statutes.**—The effect of repeal upon inchoate rights, upon offenses and upon incomplete proceedings may be avoided by a saving clause providing that it shall not affect such rights, prosecutions for such offenses, or such proceedings,²¹ or by a general statute for that purpose. Such general statutes have been enacted in nearly all of the states as well as by congress.²² The provision in the Iowa statute may be regarded as a typical one of this sort.²³ “The repeal of a statute does not revive a statute previously repealed, nor affect any right which has accrued, any duty imposed, any pen-

²⁰ In re Shoemaker, 2 Okl. 606, 39 Pac. 284.

²¹ People v. Gill, 7 Cal. 856; People v. Maxwell, 73 Hun, 157, 31 N. Y. S. 564.

²² See United States v. Reisinger, 128 U. S. 398, 9 S. C. Rep. 99, 32 L. Ed. 480.

In the following cases general saving statutes were construed and applied: Peltier v. Bradley, 67 Conn. 42, 34 Atl. 712, 32 L. R. A. 651; State v. Helms, 136 Ind. 122, 35 N. E. 893; Starr v. State, 149 Ind. 592, 49 N. E. 591; Meagher v. Drury, 89 Iowa, 366, 56 N. W. 531; Denning v. Yount, 62 Kan. 217, 61 Pac. 808, 50 L. R. A. 103; Denning v. Yount, 9 Kan. App. 708, 59 Pac. 1092; Commonwealth v. Duff, 87 Ky. 586, 9 S. W. 816; Commonwealth v. Selby, 87 Ky. 594, 9 S. W. 819; Miles v. Commonwealth, 16 Ky. L. R. 92; Commonwealth v. Sullivan, 150 Mass. 315, 23 N. E. 47; State v. Smith, 62 Minn. 540, 64 N. W. 1022; State v. Reads, 76 Minn. 69, 78 N. W. 883; Sigman v. Lundy, 66 Miss.

522, 6 So. 245; Gassert v. Bogk, 7 Mont. 585, 19 Pac. 281, 1 L. R. A. 240; Bookwalter v. Conrad, 15 Mont. 464, 29 Pac. 578, 851; Chicago Title & T. Co. v. O'Marr, 18 Mont. 568, 46 Pac. 809, 47 Pac. 4; State v. Crusius, 57 N. J. L. 279, 31 Atl. 235; Barnaby v. Bradley & Currier Co., 60 N. J. L. 158, 37 Atl. 764; People v. New York Central, etc. R. R. Co., 156 N. Y. 570, 51 N. E. 812; Empire State Savings Bank v. Beard, 81 Hun, 184, 30 N. Y. S. 756; Wirt v. Supervisors, 90 Hun, 205, 35 N. Y. S. 887; Lancaster v. Knight, 74 App. Div. 255, 77 N. Y. S. 488; People v. Bremer, 69 App. Div. 14, 74 N. Y. S. 570; McCann v. Mortgage Bank & Invest. Co., 8 N. D. 172, 54 N. W. 1026; Wallace v. Goodlett, 104 Tenn. 670, 58 S. W. 343; Bratton v. Johnson, 76 Wis. 430, 45 N. W. 412; Crooker v. Huntzicker, 113 Wis. 181, 88 N. W. 232; United States v. Keokuk & H. Bridge Co., 45 Fed. 178.

²³ Iowa Code (1888), § 49, par. 1.

alty incurred, or any proceeding commenced, under and by virtue of the statute repealed." A tax voted and levied was held to be saved by that provision, though the statute under which the tax was so levied was repealed before the collection of the tax.²⁴ Such a general provision has the same effect as a saving clause in the repealing statute.²⁵ These general statutes do not bind the legislature, but in the absence of anything showing the contrary, it is presumed that it was intended that they should apply.²⁶ These general saving statutes are held not to apply to the repeal of city ordinances.²⁷ A saving clause is intended to save something which would otherwise be lost.²⁸ An act granting review after judgment was repealed "saving all actions pending;" this saving was held to mean a saving of something out of that which was repealed, and therefore to save pending petitions for review.²⁹ It may embrace an inchoate

²⁴ *Tobin v. Hartshorn*, 69 Iowa, 648, 29 N. W. 764.

²⁵ *Cedar Rapids, etc. Ry. Co. v. Carroll Co.*, 41 Iowa, 153; *Dillon v. Linder*, 36 Wis. 341; *Burlington v. Burlington, etc. Ry. Co.*, 41 Iowa, 134; *Bartruff v. Remey*, 15 id. 257; *Chicago, etc. R. R. Co. v. Hartshorn*, 30 Fed. Rep. 541; *United States v. Barr*, 4 Sawy. 254, Fed. Cas. No. 14,527; *Garland v. Hickey*, 75 Wis. 178, 43 N. W. 832; *Harris v. Townshend*, 56 Vt. 716; *Jones v. State*, 1 Iowa, 395; *Volmer v. State*, 34 Ark. 487; *Sanders v. State*, 77 Ind. 227; *Tempe v. State*, 40 Ala. 350; *State v. Ross*, 49 Mo. 416; *Treat v. Strickland*, 23 Me. 234; *Hine v. Pomeroy*, 39 Vt. 211; *State v. Boyle*, 10 Kan. 118; *State v. Crawford*, 11 id. 32; *Ballin v. Ferst*, 55 Ga. 546; *McCuen v. State*, 19 Ark. 634; *People v. Sloan*, 2 Utah, 826; *McCallment v. State*, 77 Ind. 250; *Fowle v. Kirkland*, 18 Pick. 299; *Barton*

v. Gadsden, 79 Ala. 495; *Grace v. Donovan*, 12 Minn. 580; *Pacific, etc. Tel. Co. v. Commonwealth*, 66 Pa. St. 70; *Mongeon v. People*, 55 N. Y. 613; *State v. Hardman*, 16 Ind. App. 357, 45 N. E. 345.

²⁶ *People v. England*, 91 Hun, 152, 36 N. Y. S. 1130; *McCann v. New York*, 52 App. Div. 358, 65 N. Y. S. 308.

²⁷ *Rutherford v. Swink*, 96 Tenn. 564, 35 S. W. 554.

²⁸ *Colby v. Dennis*, 86 Me. 9, 12.

²⁹ *Id.* When a real action was commenced a statute was in force which provided that if either of the demandants should die during the pendency of a real action his death should be suggested on the record, and that the survivor might amend his declaration by describing his interest in the premises and proceed in the cause to final judgment. During the pendency of the action the statutes were revised so as to

right as well as the remedy for its enforcement when it matures.³⁰ A saving, that actions pending at the time of the repeal or passage of an act shall not be affected thereby, does not include proceedings in insolvency,³¹ nor a petition pending before county commissioners for the location of a highway.³² A municipal appropriation within the restrictions of the charter, when made, is not affected by a subsequent statute so changing the limit that such appropriation would exceed it, where the new statute contains a provision that "nothing in this act shall in any measure affect or impair any proceeding had and done under the acts to which this is an amendment, or any rights or privileges acquired under said acts."³³

A general law for the incorporation of cities provided that any city under a special charter might adopt any chap-

repeal that provision, but the revision contained these saving clauses: That all real actions which shall be pending "shall proceed and be conducted to final judgment, or other final disposal, in like manner as if this chapter had never been enacted;" in another section a saving to all persons of "all actions and causes of action which shall have accrued in virtue of or founded on any of said repealed acts, in the same manner as if such acts had never been repealed." It was contended that that action did not accrue in virtue of the repealed act, nor was founded on it. Shepley, J., said: "When the language is considered in connection with [the other saving clause] and with the recollection that the general purpose of the revision was to embody in a more systematic form the existing laws, with certain modifications and new provisions, without destroying existing rights, there can

be little doubt that it was the intention of the legislature to preserve not only actions which, technically and properly speaking, accrued or had been founded on the statute, but those also which were preserved and secured to a party by the repealed act." *Treat v. Strickland*, 23 Me. 234.

³⁰ *Cochran v. Taylor*, 13 Ohio St. 382.

³¹ *Belfast v. Fogler*, 71 Me. 403. Provisions saving pending proceedings are construed in the following cases: *Rice v. McCaully*, 7 Houst. 226, 81 Atl. 240; *Nelson v. Sykes*, 44 Minn. 68, 46 N. W. 207; *Hopkins v. Jamieson-Dixon Mill Co.*, 11 Wash. 308, 39 Pac. 815.

³² *Webster v. County Commissioners*, 63 Me. 27; *Downs v. Town of Huntington*, 85 Conn. 588. And see *Burlington v. Burlington Traction Co.*, 70 Vt. 491, 41 Atl. 514.

³³ *Beatty, Auditor, v. People*, 6 Colo. 538.

ter or section in lieu of its charter on the same subject. It was held that such adoption had the same effect as an amendment of the charter and that the general saving statute would apply to save any rights under the charter provisions displaced by the adoption.³⁴ But where a local prohibitory statute was displaced by the adoption of a local option law, it was held that prosecutions under the prohibitory law were not preserved by the general saving statute.³⁵ An act of February 10, 1893, repealed the mortgage tax law without any saving clause as to taxes then due. On February 21, 1893, an act was passed that these taxes should be collected as if there had been no repeal. Both acts went into immediate effect. It was held that the acts were to be construed together and that the saving clause of the later act was virtually incorporated into the earlier.³⁶ The right to peremptory challenges in a criminal case is held not to accrue until the defendant is put on trial, and where the statute giving such right is repealed before the trial, the right is not preserved by a general saving statute, that a repeal shall not affect any right accrued before such repeal.³⁷ And the same saving statute was held not to preserve a lien for wages, where the repeal of the statute took place after the labor was performed and before proceedings commenced.³⁸

A revenue act provided that lands sold for the non-payment of taxes could be redeemed within a certain time upon the payment of a fixed penalty. The act was repealed by a subsequent one, changing the time of redemption and the amount of the penalty, but providing that the former act should remain in force for the collection of taxes levied thereunder. It was held that an act in force for the purpose of collection was in force for the purpose of redemp-

³⁴ *Mauch v. Hartford*, 112 Wis. 40, Pac. 642; *Windle v. Hughes*, 40 Ore. 87 N. W. 816. 1, 65 Pac. 1058.

³⁵ *Wooten v. Commonwealth*, 98 Ky. 468, 33 S. W. 397.

³⁷ *Mathis v. State*, 31 Fla. 291, 12 So. 681.

³⁶ *Smith v. Kelly*, 24 Ore. 464, 33

³⁸ *National Bank v. Williams*, 38 Fla. 305, 20 So. 981.

tion.³⁹ The lien of a judgment in respect to duration was held saved by the words "no rights vested or liabilities incurred at that time shall be lost or discharged." The judgment lien is incident to a judgment, a liability incurred, and therefore saved from the effect of the repealing statute.⁴⁰ A saving of pending prosecutions does not include a case where the prosecution has closed and sentence has been pronounced;⁴¹ nor cases commenced afterwards.⁴² Under a saving of pending prosecutions and offenses theretofore committed, an indictment filed after the repeal took effect was sustained.⁴³ Such a provision in a repealing act relates solely to the acts repealed by it,⁴⁴ unless a different intention is deducible from the language of the saving clause. A provision in the repealing law to the effect "that no remedy to which a creditor is entitled under the provisions of the laws heretofore in force shall be impaired by this act" does not apply to creditors suing for breaches of the bond occurring since the enactment of the repealing statute.⁴⁵ The effect of the repeal of a statute and its re-enactment in the same words by a statute which takes effect at the same time with the repealing act is to continue such statute in uninterrupted operation.⁴⁶ The rule is the same as to criminal offenses.⁴⁷

§ 288 (168). **Revival by repeal of repealing statute.**—The common-law rule is well settled that the simple repeal, suspension or expiration of a repealing statute revives the

³⁹ Wolfe v. Henderson, 28 Ark. 304.

⁴⁰ Dearborn v. Patton, 3 Ora. 420.

⁴¹ Aaron v. State, 40 Ala. 307. See Luke v. Calhoun Co., 56 Ala. 415.

⁴² Knox v. Baldwin, 80 N. Y. 610.

⁴³ Sanders v. State, 77 Ind. 227.

⁴⁴ Mongeon v. People, 55 N. Y. 613.

⁴⁵ Collins v. Warren, 63 Tex. 811.

⁴⁶ Laude v. Chicago, etc. R. R. Co., 33 Wis. 640; Middleton v. N. J. etc. R. R. Co., 26 N. J. Eq. 269;

Dashiell v. Mayor, etc., 45 Md. 615;

Capron v. Strout, 11 Nev. 304;

United Hebrew B. Assn. v. Ben-

shimol, 130 Mass. 325; Knoup v.

Bank, 1 Ohio St. 603; Coffin v. Rich,

45 Me. 507, 71 Am. Dec. 559; Smith

v. Estes, 46 Me. 158.

⁴⁷ State v. Gumber, 87 Wis. 298;

State v. Wish, 15 Neb. 448, 19 N.

W. 686; ante, § 238; McMullen v.

Guest, 6 Tex. 278; Hirschburg v.

People, 6 Colo. 145.

repealed statute, whether such repeal was express or only by implication.⁴⁸ But it is frequently provided by statute that the repeal of a repealing act shall not have that effect.⁴⁹ Where a law is merely suspended, the removal of its suspension restores its operation notwithstanding such a statute.⁵⁰ The constitution of New Jersey provides that "no law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length." It has been held by the highest court of that state that this provision does not cover a revival by operation of law and, therefore, that the repeal of a repealing act revives the original act.⁵¹ The same ruling has been made in Tennessee in a case where the first repeal was by implication only.⁵² When a statute restraining a man's nat-

⁴⁸ *Gale v. Mead*, 4 Hill, 109; *Brown v. Barry*, 8 Dall. 365; *People v. Davis*, 61 Barb. 456; *Wheeler v. Roberts*, 7 Cow. 536; *Van Denburgh v. President, etc.*, 66 N. Y. 1; *Van Valkenburgh v. Torrey*, 7 Cow. 252; *People v. Trustees*, 26 Hun, 488; *Commonwealth v. Churchill*, 2 Met. 118; *Hastings v. Aiken*, 1 Gray, 163; *McMillan v. Bellows*, 37 Hun, 214; *Doe v. Naylor*, 2 Blackf. 32; *Harris v. Supervisors*, 33 Hun, 279; *Zimmerman v. Perkiomen, etc. Co.*, 81* Pa. St. 96; *Baum v. Thoms*, 150 Ind. 378, 50 N. E. 357, 65 Am. St. Rep. 368; *Mayor v. Broadway*, 97 N. Y. 375; *Chard v. Holt*, 136 N. Y. 80, 32 N. E. 740; *People v. Scannel*, 62 App. Div. 249, 70 N. Y. S. 983; *Greenlee v. Eisenbrown*, 10 Pa. Co. Ct. 433; *Ottman v. Hoffman*, 7 Misc. 714, 28 N. Y. S. 28. It has been held that a statute repealed by two acts is not revived by repeal of one of them. *Dyer v. State*, Meigs, 237; *Teter v. Clayton*, 71 Ind. 237; *Poor Directors v. R. R. Co.*, 7 Watts &

S. 236; *Zimmerman v. Perkiomen*, 81* Pa. St. 96; *Longlois v. Longlois*, 48 Ind. 60; *Waugh v. Riley*, 68 id. 482; *Niblack, Adm'r, v. Goodman*, 67 id. 174; *Brinkley v. Swicegood*, 65 N. C. 626; *Harrison v. Walker*, 1 Ga. 82; *People v. Wintermute*, 1 Dak. 63, 46 N. W. 694; *Janes v. Buz-zard*, Hempst. 259; *Witkowski v. Witkowski*, 16 La. Ann. 232; *Tallamon v. Cardenas*, 14 id. 509; *Weakley v. Pearce*, 5 Heisk. 401; *Hightower v. Wells*, 6 Yerg. 249. See *Southwark Bank v. Commonwealth*, 26 Pa. St. 446.

⁴⁹ *Rice v. Commonwealth*, 22 Ky. L. R. 1793, 61 S. W. 473; *State v. Sawell*, 107 Wis. 800, 83 N. W. 296.

⁵⁰ *State v. Sawell*, 107 Wis. 800, 83 N. W. 296; *Cassell v. Lexington, etc. Turnpike Co.*, 10 Ky. L. R. 486, 9 S. W. 502.

⁵¹ *Wallace v. Bradshaw*, 54 N. J. L. 175, 23 Atl. 759, reversing 53 N. J. L. 315, 21 Atl. 941.

⁵² *State v. King*, 104 Tenn. 156, 57 S. W. 150; *Zickler v. Union Bank*

ural rights, or his use of his property, is repealed, he is restored to those rights, as before the law was passed.⁵³ This rule of revival was held to apply to the vote of a tax by taxable inhabitants. This vote was restored to effect by repealing a rescinding vote.⁵⁴ Where a statute professes to repeal absolutely a prior law and substitutes other provisions on the same subject which are limited to continue only till a certain time, the prior law does not revive after the repealing statute is spent, unless the intention of the legislature to that effect is expressed.⁵⁵ The legislature may make the revival of an act depend upon a future event to be made known by executive proclamation.⁵⁶ Where an act is revived by a subsequent law the legislature must be understood to give it, from the time of its revival, precisely that force and effect which it had at the moment when it expired.⁵⁷ Incomplete proceedings which were arrested and rendered void by repeal of the statute under which they were instituted will not be restored to life by a revival thereof.⁵⁸ A forfeiture for a prohibited act was given by statute to any one who should sue for it. Afterwards the exclusive right to sue for it was given to overseers of the poor. The repeal of this act was held to operate only prospectively and gave no right to any other than the overseers

& T. Co., 104 Tenn. 277, 57 S. W. 341. *Contra*, *Renter v. Bauer*, 8 Kan. 505. In the first case cited the court says: "Whatever may be the law as to the revival of laws which have been expressly repealed by repealing the repealing act, it has been held in this state, and we think upon sound principle, that when a law has been repealed by implication merely, the repeal of the act which thus impliedly repeals the former law revives such law, and this for the reason such former law was never, in fact, re-

pealed, but its operation merely suspended or interrupted by the adoption of another rule." pp. 166, 167.

⁵³ *James v. Dubois*, 16 N. J. L. 285.

⁵⁴ *Gale v. Mead*, 4 Hill, 109.

⁵⁵ *Warren v. Windle*, 8 East, 205.

⁵⁶ *Cargo of Brig Aurora v. United States*, 7 Cr. 882, 8 L. Ed. 878.

⁵⁷ *Id.* See *Shipman v. Henbest*, 4 T. R. 109; *Winter v. Dickerson*, 42 Ala. 92.

⁵⁸ *Commonwealth v. Leech*, 24 Pa. St. 55.

for forfeitures incurred during the operation of the second act.⁵⁹

Where the repeal of a repealing statute is for the purpose of substituting other provisions in its place, the implication of an intention to revive the repealed statute cannot arise, and especially if the substituted provision is repugnant to the original provision, or is not properly cumulative to it.⁶⁰ So the repeal of a statute which was a revision of and a substitute for a former act to the same effect which was therefore repealed cannot be deemed to revive the previous act; for this would be plainly contrary to the intention of the legislature.⁶¹ And where a statutory provision has been repealed without change in the amendatory act and the latter is afterwards repealed, the original provision is repealed also.⁶² Statutes have been very generally adopted in the states abolishing the rule of implied revival as a consequence of the repeal of the repealing statute.⁶³

In *State v. Slaughter*⁶⁴ the court construed the effect of a general provision that "where any law repealing any former law, clause or provision shall itself be repealed, it shall not be considered to revive such former law, clause or provision, unless it be expressly otherwise provided." It was held that if the section of the marriage act under consideration repealed or superseded the common law on the subject of incestuous marriages, its repeal would not revive the common law. Where a revival requires re-enactment, a legislative declaration that an act mentioned shall not repeal the provision will not suffice.⁶⁵ Where a general act appli-

⁵⁹ *Van Valkenburgh v. Torrey*, 7 Cow. 252.

⁶⁰ *Commonwealth v. Churchill*, 2 Met. 118; *Bouton v. Royce*, 10 Phila. 559; *Warren v. Windle*, 3 East, 205.

⁶¹ *Butler v. Russel*, 3 Cliff. 251, Fed. Cas. No. 2243; *Butner v. Boiffeillet*, 100 Ga. 743, 28 S. E. 464; *State v. Burk*, 88 Iowa, 661, 56 N. W. 180; *Cochrane v. King County*, 12 Wash. 518, 41 Pac. 922.

⁶² *Moody v. Seaman*, 46 Mich. 74, 8 N. W. 711; *Goodno v. Oshkosh*, 31 Wis. 127; *People v. Supervisors*, 67 N. Y. 109, 23 Am. St. Rep. 94; *Harris v. Supervisors*, 33 Hun, 279.

⁶³ See *Milne v. Huber*, 3 McLean, 212, Fed. Cas. No. 9617.

⁶⁴ 70 Mo. 484.

⁶⁵ *State v. Conkling*, 19 Cal. 501.

cable to all the counties of the state is repealed as to a particular county, and a still later act amends a section so partially repealed, the amendment will not be deemed to affect the excluded county.⁶⁶

Where a repealing act is repealed before it goes into effect, it is nugatory and the original act stands.⁶⁷ Where a local or special law is repealed by another local or special law and the latter is then repealed, it is held that the original act is not revived, if there is a general law covering the subject.⁶⁸ An act imposing certain fees and duties upon auctioneers was amended "so as to read as follows," and the amendatory act repealed. The latter act contained provisions which indicated that the legislature supposed that the repeal revived the original act. Two years later the next legislature passed an act based upon the assumption that the original act was in force. It was held that this belief or assumption of the legislature could have no effect to revive the original act without appropriate words to that effect.⁶⁹ Where a city was incorporated under a general law and afterwards under a special charter, it was held that the repeal of the latter did not restore the former organization.⁷⁰

⁶⁶ *People v. Tyler*, 86 Cal. 522.

⁶⁷ *Adam v. Wright*, 84 Ga. 720, 11 S. E. 893.

⁶⁸ *Knox Street*, 12 Pa. Supr. Ct. 534.

⁶⁹ *People v. Wilmerding*, 136 N. Y. 863, 32 N. E. 1099. The court says: "A legislative intent to work a revival of a law which already, by legislative action, has been wholly annihilated is not alone sufficient to accomplish such revival. There must be some language used which is at least equivalent to an enactment before an act, which had become wholly extinct and blotted out, can be revived and have the breath of life

again breathed into it . . . The belief of the legislature of 1883, however, has not the slightest tendency to prove what was the legal effect of the action of the legislature of 1868 upon the prior statutes. This is a simple question of law. We find from an examination of the act of 1868 that the act of 1866 was plainly and in unmistakable language repealed. The fact that the legislature of 1883 treated the third section of the act of 1866 as still alive is simply proof of a legislative error in regard to the law." pp. 373, 374.

⁷⁰ *Ruohs v. Athens*, 91 Tenn. 20, 18 S. W. 400, 30 Am. St. Rep. 858

§ 289. Constitutional provisions as to repeals.—The constitution of Georgia provides as follows: “No law, or section of the code, shall be amended or repealed by mere reference to its title, or to the number of the section of the code, but the amending or repealing act shall distinctly describe the law to be amended or repealed, as well as the alteration to be made.”⁷¹ A repealing act which gives the title of the act repealed and date of its approval is held to comply with the constitution.⁷² The constitution of Tennessee contains a similar provision reading as follows: “All acts which repeal, revive or amend former laws shall recite in their caption or otherwise the title or substance of the law repealed, revived or amended.” An act to repeal certain sections of an act gave the title of the act containing the sections and the date of its passage, and was held sufficient.⁷³ It is held that these constitutional provisions do not apply to repeals by implication.⁷⁴

§ 290. Repeal by constitution.—Ordinarily constitutional provisions imposing limitations upon the legislative power are prospective in their operation and do not repeal existing statutes.⁷⁵ But a constitutional provision may be so framed as to repeal all inconsistent legislation.⁷⁶ The constitution of Mississippi, adopted in 1890, forbids local or special laws on various subjects, and among others exempting any person from jury, road, or other civil duty, and de-

⁷¹ Const. 1877, art. 3, sec. 7, par. 17.

⁷² *Adam v. Wright*, 84 Ga. 720, 11 S. E. 893; *Fullington v. Williams*, 98 Ga. 807, 27 S. E. 183.

⁷³ *Ruohs v. Athens*, 91 Tenn. 20, 18 S. W. 400, 80 Am. St. Rep. 858.

⁷⁴ *Johnson v. Southern Mut. B. & L. Ass'n*, 97 Ga. 622, 25 S. E. 358; *Collins v. Russell*, 107 Ga. 423, 33 S. E. 444; *Higgins v. Mitchell County*, 6 Kan. App. 314, 51 Pac. 72; *Lowe v. Bourbon County*, 6 Kan. App. 603, 51 Pac. 579; *Hunter*

v. Memphis, 93 Tenn. 571, 26 S. W. 828; *State v. Yardley*, 95 Tenn. 546, 32 S. W. 481, 84 L. R. A. 656; *Hendley v. State*, 98 Tenn. 665, 41 S. W. 352.

⁷⁵ *Pecot v. Police Jury*, 41 La. Ann. 706, 6 So. 677; *ante*, § 190.

⁷⁶ *Griebel v. State*, 111 Ind. 369, 13 N. E. 700; *Fesler v. Brayton*, 145 Ind. 71, 44 N. E. 87; *Van Pelt v. Gardner*, 54 Neb. 701, 75 N. W. 874; *Remington v. Higgins*, 6 S. D. 818, 60 N. W. 72.

clares that no person shall be exempted therefrom by force of any local or private law. The latter was held to repeal all local or private laws conferring such exemption.⁷⁷ The constitution of Arkansas, adopted in 1864, contained the following: "And it is further hereby declared that all laws in force in this state on the 4th day of March, 1861, are still in force, not inconsistent with the provisions of this constitution and which have not expired by limitation therein contained." This was held, by implication, to repeal all laws passed subsequent to March 4, 1861.⁷⁸ Before the new constitution of Ohio took effect, the legislature of that state passed a law authorizing towns and counties, the people assenting, to subscribe for stock in railroad corporations. A clause in the constitution declares that "the general assembly shall never authorize any county, town or township by vote of its citizens or otherwise to become a stockholder in any joint-stock company or corporation." It was held that this clause did not repeal the previous law.⁷⁹

§ 291. An act to repeal a void act.—In *State v. Field*⁸⁰ the question arose whether an act to repeal a void act was itself valid. The act in question purported to repeal the void act and to substitute a valid act in its place. The act was sustained and the court says: "But it is said a void act is no law, and the power to repeal does not reach it. It is evident, however, that this argument ignores the fact that unconstitutional enactments are sometimes spread upon our statute books and are obeyed by the people and the officers of the law, and are usually clothed with the semblance at least of valid laws. They stand unchallenged sometimes for years, and then present the gravest questions for the

⁷⁷ *Chidsey v. Scranton*, 70 Miss. 449, 12 So. 545.

⁷⁸ *Ex parte Osborne*, 24 Ark. 479; *Mach v. Johnson*, 59 Ark. 838, 27 S. W. 231.

⁷⁹ *Cass v. Dillon*, 2 Ohio St. 607; *State ex rel. v. Dudley*, 1 Ohio St.

487; *Van Hagan, Ex parte*, 25 id. 426; *Elizabethtown, etc. R. R. Co. v. Elizabethtown*, 12 Bush, 283; *Coats v. Hill*, 41 Ark. 149; *Stephens v. Ballou*, 27 Kan. 594.

⁸⁰ 119 Mo. 593, 24 S. W. 752.

determination of the courts. Now, when placed upon the statute books by the action of the legislature, why should not the same governmental agency remove them from the statutes and prevent them from becoming snares and pitfalls to the people of the state. Surely it needs no argument to demonstrate that the legislature has the power to see that nothing shall deface our statute books that is not a law. . . . Certainly the legislature may purge the statute books of any matter not lawfully there. To deny it this power is to ascribe to it a most dishonoring impotence and a disregard of the analogies of the law."

§ 292. Construction of express repeals.—The repealing clause of a statute is not effective until the act goes into effect and until then the old law remains in force.⁸¹ The express repeal of certain sections implies an intent not to repeal other sections.⁸² An act was revised and repealed except one section. This was held not to give any new force to that section, nor to make it a part of the new act.⁸³ Where a territorial act was amended by congress "so as to read as follows," and as so amended was approved and confirmed, the territorial act was held to be repealed.⁸⁴ A repeal of all former acts on pleading and practice was held not to repeal an act making the county from which a change of venue is taken liable for all expenses of the trial.⁸⁵ A statute providing a remedy for an illegal tax was held not embraced in a general repeal of all laws relating to assessments in an act prescribing and regulating the method of assessing taxes.⁸⁶ An act fixing the compensation of county commissioners at three dollars and fifty cents a day and repealing all local acts fixing a less *per diem* was held not to

⁸¹ State v. Kearney, 49 Neb. 325, 337, 68 N. W. 533, 70 N. W. 255.

⁸² Sales v. Barber Asphalt Pav. Co., 166 Mo. 671, 66 S. W. 979; Curtwright v. Crow, 44 Mo. App. 563; Crosby v. Patch, 18 Cal. 438; State v. Morrow, 26 Mo. 131. See Burnham v. Onderdonk, 41 N. Y. 425.

⁸³ Matter of Lampson, 22 Misc. 198, 49 N. Y. S. 576.

⁸⁴ Murphy v. Utter, 186 U. S. 95, 22 S. E. Rep. 776, 46 L. Ed. 1070.

⁸⁵ State v. Moore, 121 Ind. 116, 23 N. E. 742.

⁸⁶ Shear v. Commissioners of Columbia, 14 Fla. 146.

repeal a local act fixing a salary.⁸⁷ An act relating to the selection of jurors in counties of 70,000 population or more repealed the existing law on the subject as to such counties, with a proviso that the former law should remain in force until such time as the county board complied with the act. Non-compliance having been shown in a given case the former law was held to be in force.⁸⁸ An act of congress disapproved and annulled all acts of the territory of Utah "which establish, support, maintain, shield or countenance polygamy." This was held not to annul an act providing that illegitimate children and their mothers should inherit the same as legitimate children.⁸⁹ The code of North Carolina provided that no act of a private or local nature should be construed to be repealed by any section of the code. It was held that no provision of a private charter would be repealed though it was of a public nature.⁹⁰ Where an act states that it is to take the place of statutes which have failed in their object and there was only one section of the Revised Statutes which could have been intended, that section will be held to be repealed, though not necessarily inconsistent.⁹¹ An act of March 8, 1893, in regard to foreign corporations repealed chapter 24 of the laws of 1887 on the same subject. In the revised code passed February 19, 1895, chapter 24 was largely, though not identically, reenacted. On March 13, 1895, an act was passed providing that the act of March 8, 1893, should continue in full force and effect. It was held that this did not give any force to the section in the latter act repealing chapter 24, so as to make it operate on the sections of the code adopted from said chapter.⁹² A general revenue law of Washington re-

⁸⁷ Commonwealth v. Lloyd, 2 Pa. Supr. Ct. 6; affirmed, 178 Pa. St. 308; Bucks County v. Gill, 5 Pa. Dist. Ct. 266.

⁸⁸ Neal v. State, 82 Neb. 120, 49 N. W. 174.

⁸⁹ Cope v. Cope, 137 U. S. 682, 11 S. E. Rep. 222, 84 L. Ed. 832.

⁹⁰ State v. Womble, 112 N. C. 862, 17 S. E. 491, 19 L. R. A. 827.

⁹¹ Meriwether v. Love, 167 Mo. 514, 67 S. W. 250.

⁹² State v. Potwitt, 17 Mont. 41, 41 Pac. 1004.

pealed all acts and parts of acts theretofore enacted by the legislature of the territory or state "providing for the assessment and collection of taxes" in that state. This was held to refer to laws operating generally in all parts of the state and not to repeal an act on the subject applicable only to cities of the first class.⁹³ Where the title of a repealing act describes the act to be repealed it need not be again described in the body of the act but may be referred to as "said act."⁹⁴

§ 293. **Errors and mistakes in express repeals.**—A liquor tax law of New York passed in 1896 contained an express repeal of various acts including chapter 744 of the acts of 1895. This act related to a sewer in Rochester and was amended at the same session. Chapter 774 of the acts of 1895 was a liquor statute. The reference to chapter 744 was held to be a clerical mistake and the law was held not to be repealed.⁹⁵ An act of Washington to provide for the reclamation of the state's granted school, tide, oyster and other lands contained an express repeal of an act relating to arid lands. The former act as passed did not relate to such lands, but it appeared that as introduced it embraced the arid lands, but the provisions relating to such lands were stricken out of the title and body of the act in course of its passage through the legislature. This was held to show that the legislature did not intend to deal with arid lands and that the repealing clause was left in by mistake and should be disregarded.⁹⁶ The title of an act was to amend sections 643, 644, 646 and 647 of the code. The body of the act amended these sections and repealed sections 243, 244, 246 and 247. This was held to be a mistake, and the repealing clause was corrected by the title and

⁹³ *State v. Carson*, 6 Wash. 250, 33 Pac. 428.

⁹⁴ *Savings Bank v. Burns*, 104 Cal. 478, 38 Pac. 102. The body of the act was "section 1 of said act is hereby repealed."

⁹⁵ *McKee Land & Improvement*

Co. v. Williams, 68 App. Div. 533, 51 N. Y. S. 399; *McKee Land & Imp. Co. v. Swikehard*, 23 Misc. 21, 51 N. Y. S. 399.

⁹⁶ *Howlett v. Cheetham*, 17 Wash. 626, 50 Pac. 522.

body of the act so as to repeal the same sections as were amended.⁹⁷

“A clause in a statute purporting to repeal other statutes is subject to the same rules of interpretation as other enactments, and the intent must prevail over literal interpretation.”⁹⁸ An absolute repeal may be construed as a qualified or partial repeal, where other parts of the statute show such to have been the real intent.⁹⁹

The revised codes of North Dakota included a new revenue law and expressly repealed a great number of acts including “chapter 132 of the laws of 1890.” One section of this chapter out of a hundred or more provided for the office of district assessor in unorganized counties. If this section was repealed then there was no provision in the law for levying a tax in such counties and the whole revenue law was void. The new act referred to the office as an existing one and plainly intended that all property in the state should be taxed. It was held that the absolute repeal of the whole chapter should be qualified by excluding the section in question from its operation.¹

⁹⁷ State v. Pierce, 51 Kan. 241, 32 Pac. 924.

⁹⁸ Smith v. People, 47 N. Y. 330, 339; Home B. & L. Ass'n v. Nolan, 21 Mont. 205, 53 Pac. 788.

⁹⁹ Id.

¹ State v. Morehouse, 5 N. D. 406, 67 N. W. 140. The court says: “It is manifest that the broad letter of this repealing act is in conflict with the whole spirit and purpose of the revenue law passed at the same time. As both cannot stand, it is obvious that we must give effect to that which expresses the true legislative purpose. It is too plain for argument that one of the great purposes of the legislation was to provide for the assessment of property throughout the entire state.

To give effect to that purpose we must limit the broad language of the repealing act, so that it will not defeat such purpose. Not having made provision in the new revenue law for the office of district assessor, and yet having clearly evinced a purpose that property in such territory should be assessed, and having in terms referred to that office and the district over which the jurisdiction of a district assessor extended, it does not admit of doubt that it was never intended by the legislature that those provisions of chapter 132 relating to the office of district assessor, etc., should be repealed. To reach the contrary conclusion would be to impute to the legislature a deliberate intention.

§ 294. Effect of a statute and its repeal upon the common law.—A statute inconsistent with the common law repeals the common law so far as it is inconsistent.² “If the legislature undertakes to provide for the regulation of human conduct in respect to a specific matter or thing already covered by the common law, and parts of which are omitted from the statute, such omission may be taken generally as evidence of the legislative intent to repeal or abrogate the same.”³ But an intention to change the rule of the common law will not be presumed from doubtful statutory provisions; the presumption is that no such change is intended unless the statute is explicit and clear in that direction.⁴ The common law will be held no further abrogated than the clear import of the language used in the statute requires.⁵ An act provided that any person who shall keep a disorderly house shall on conviction thereof be punished by a fine of not less than fifty nor more than three hundred dollars or by imprisonment not less than ten days or more than six months. The keeping a disorderly house was a

to pass an unconstitutional law, for its violation of the state constitution would be palpable if it left a portion of the territory of the state without any legislation authorizing the levy and collection of taxes therein. Moreover, we must not ignore the public mischief which would result from such a construction of the statute as would defeat taxation, not only in these unorganized townships, but throughout the entire state. In a doubtful case, such consideration should have great weight; but we do not regard this case as at all doubtful.” p. 410. Compare *People v. Wilmerding*, 136 N. Y. 363, 82 N. E. 1099, which is stated in section 288, note 69.

² *Borger v. Borger*, 104 Wis. 282,

80 N. W. 585, 76 Am. St. Rep. 877; *Hill v. Ginn*, 2 Penn. (Del.) 174, 43 Atl. 608.

³ *In re Lord & Polk Chemical Co.*, 7 Del. Ch. 248, 44 Atl. 775.

⁴ *McClelland v. Hammond*, 13 Colo. App. 82, 54 Pac. 538; *McCarthy v. McCarthy*, 20 App. Cas. (D. C.) 195; *Bozarth v. Largent*, 128 Ill. 95, 21 N. E. 218; *Deatherage v. Rohrer*, 78 Ill. App. 248; *Commonwealth v. Illinois Cent. R. R. Co.*, 104 Ky. 366, 47 S. W. 258; *Beard v. State*, 74 Md. 180, 21 Atl. 700; *Forrester v. Boston, etc. Min. Co.*, 21 Mont. 544, 55 Pac. 239, 853; *People v. Palmer*, 109 N. Y. 110, 16 N. E. 529; *Smith v. Railroad Co.*, 182 Pa. St. 139, 87 Atl. 930.

⁵ *Id.*; *Fitzgerald v. Quann*, 109 N. Y. 441, 17 N. E. 354.

common-law offense punishable by fine or imprisonment, or both, in the discretion of the court, without limit. It was held that the statute did not repeal the common law as to past offenses, and a person convicted before the act took effect was sentenced after it took effect to a fine of \$1,200 and imprisonment for thirteen months and the judgment sustained.⁶ The repeal of a statute which abrogates the common law revives the common law,⁷ even though there is a statute that the repeal of a repealing act shall not revive the act repealed.⁸ So the repeal of an act declaratory of the common law leaves the common law in force.⁹

§ 295. **Miscellaneous points and cases.**—The mere reference to a repealed act or section as still in force, or the supposition or assumption on the part of the legislature that such act or section remains in force, does not affect the repeal or restore the law.¹⁰ Where a provision which excepts a class or specified localities from the operation of the act is repealed, the law operates generally over the excepted class or localities.¹¹ The enacting clause of a statute belongs no

⁶ *Beard v. State*, 74 Md. 130, 21 Atl. 700.

⁷ *Matthewson v. Phoenix Iron Foundry*, 20 Fed. Rep. 281; *State v. Rollins*, 8 N. H. 550; *Gray v. Obear*, 54 Ga. 231; *Lowenberg v. People*, 27 N. Y. 336. See *Boismare v. His Creditors*, 8 La. 815.

⁸ *Beavan v. Went*, 155 Ill. 592, 41 N. E. 91, 31 L. R. A. 85; *Baum v. Thoms*, 150 Ind. 378, 50 N. E. 357, 65 Am. St. Rep. 868.

⁹ *Hanlon v. Partridge*, 69 N. H. 88, 44 Atl. 807; *Chippewa Falls v. Hopkins*, 109 Wis. 611, 85 N. W. 553; *Matter of Steinway*, 31 App. Div. 70, 52 N. Y. S. 343.

¹⁰ *District of Columbia v. Hutton*, 143 U. S. 18, 12 S. C. Rep. 369, 36 L. Ed. 60; *People v. Wilmerding*, 136 N. Y. 363, 32 N. E. 1092.

Compare *State v. Morehouse*, 5 N. D. 406, 67 N. W. 140. In the case first cited the court says: "But even if congress had supposed that that section was still the law, when, as a matter of fact, it had been repealed, it would make no difference in this consideration. The question is, was said § 354 repealed by the act of 1878? That is a judicial question, to be determined by the courts, upon a proper construction of that section and subsequent legislation upon the same subject-matter, and is not for the legislative branch of the government to determine." p. 27.

¹¹ *Heinssen v. State*, 14 Colo. 228, 23 Pac. 995; *Bauen County Court v. Knislow*, 9 Ky. L. R. 108; *Pushor v. Morris*, 53 Minn. 325, 53 N. W.

more to the first section of a statute than to the other sections, and a repeal of the first section does not leave the other sections without such clause.¹² A freeholders' charter framed in accordance with the constitution is held to repeal prior inconsistent laws.¹³ A statute forbade the sale of liquors within three miles of an orphans' home. It was held that the burning of the home and the temporary removal of the inmates to a place five miles distant did not suspend the operation of the act.¹⁴ An act imposing upon three cities the duty of maintaining a bridge is not repealed by an act consolidating them into one, but the obligation passes to the new corporation.¹⁵ The mere omission of an act from a revision was held not to repeal it.¹⁶ Where a town voted for license under a general local option law, a prohibitory act applicable to the precinct including the town was held to be repealed as to such town.¹⁷ Where a law is revised and certain provisions omitted, which had been declared invalid, a repeal of all inconsistent laws cannot be construed as a re-enactment of the omitted provisions, on the ground that they are not inconsistent.¹⁸ Where one section is dependent upon another, a repeal of the latter destroys both.¹⁹ An amendment to a section or statute is not necessarily repealed by a repeal of the section or statute amended.²⁰ A joint resolution of congress passed July 7, 1898, annexed the Hawaiian Islands and provided that the municipal legislation of the Islands, not inconsistent with the resolution, nor contrary to the constitution of the United States nor to any

143; *Grand Isle v. Milton*, 68 Vt. 234, 35 Atl. 71.

¹² *Pearce v. Vittum*, 193 Ill. 193, 61 N. E. 1116.

¹³ *Ex parte Sparks*, 120 Cal. 895, 52 Pac. 715.

¹⁴ *State v. Barringer*, 110 N. C. 525, 14 S. E. 781; *State v. Eaves*, 106 N. C. 752, 11 S. E. 870, 8 L. R. A. 259.

¹⁵ *Winters v. George*, 21 Ore. 251, 27 Pac. 1041.

¹⁶ *State v. Meek*, 26 Wash. 405, 67 Pac. 76.

¹⁷ *Lafferty v. Hoffman*, 99 Ky. 80, 35 S. W. 123, 32 L. R. A. 203.

¹⁸ *Vance v. Vandercook County*, 170 U. S. 438, 18 S. C. Rep. 645, 42 L. Ed. 1111.

¹⁹ *Stony Creek v. Kabel*, 144 Ind. 501, 43 N. E. 559.

²⁰ *State v. Young*, 30 S. C. 399, 9 S. E. 355; *State v. Whitesides*, 30 S. C. 579, 9 S. E. 661.

existing treaty, should remain in force until congress should otherwise determine. Congress did not otherwise determine until June 14, 1900. It was held that the resolution did not annul legislation permitting criminals to be tried on information and to be convicted by less than the unanimous verdict of a jury, that the intent was to continue the existing system of laws under which civil and criminal justice was administered, and that the intent prevailed over the letter of the resolution.²¹ Though the reason for a statute ceases, the statute continues until repealed.²²

²¹ Hawaii v. Mankichi, 190 U. S. 197.

²² State v. Eaves, 106 N. C. 752, 11 S. E. 870, 8 L. R. A. 259.

CHAPTER IX.

STATUTES VOID IN PART.

§ 296 (169). Statutes may be void in part and good in part.—In this country legislative bodies have not an unlimited power of legislation. Constitutions exist which contain the supreme law. Statutes which contravene their provisions are void. Courts have power, and they are charged with the judicial duty, to support the constitutions under which they act against legislative encroachments. They will declare void acts which conflict with paramount laws.¹ Where a part only of a statute is unconstitutional, and therefore void, the remainder may still have effect under certain conditions. The court is not warranted in declaring the whole statute void unless all the provisions are connected in subject-matter, depend on each other, were designed to operate for the same purpose, or are otherwise so dependent in meaning that it cannot be presumed that the legislature would have passed one without the other. The constitutional and unconstitutional provisions may even be expressed in the same section, or even in the same sentence, and yet be perfectly distinct and separable, so that the first may stand though the last fall.² The point or test is not

¹ *Scudder v. Trenton Delaware Falls Co.*, 1 N. J. Eq. 694, 23 Am. Dec. 756; *State v. Parkhurst*, 9 N. J. L. 427; *Bank of Hamilton v. Dudley's Lessee*, 2 Pet. 492, 7 L. Ed. 496; *Ogden v. Saunders*, 12 Wheat. 213, 6 L. Ed. 606; *Emerick v. Harris*, 1 Bin. 416; *Piscataqua Bridge v. N. H. Bridge*, 7 N. H. 35; *Pierce v. Kimball*, 9 Me. 59; *Goshen v. Stonington*, 4 Conn. 225, 10 Am. Dec. 121; *Hill v. Sunderland*, 3 Vt. 507; *Holden v. James*, 11 Mass. 396, 6 Am. Dec. 174.

² *Grimes v. Eddy*, 126 Mo. 168, 28 S. W. 756, 47 Am. St. Rep. 653, 26 L. R. A. 638; *People v. Knopf*, 133 Ill. 410, 56 N. E. 155; *State v. Dillon*, 82 Fla. 545, 14 So. 383; *Moore v. State*, 63 Neb. 345, 88 N. W. 514; *State v. Westerfield*, 23 Nev. 468, 49 Pac. 119.

whether they are contained in the same section, for the distribution into sections is purely artificial, but whether they are essentially and inseparably connected in substance.³ If so connected the whole statute is void.⁴

³ *Treasurer v. Bank*, 47 Ohio St. 503, 523, 25 N. E. 697; *Commonwealth v. Hitchings*, 5 Gray, 482; *Mobile, etc. R. R. Co. v. State*, 29 Ala. 573; *South & North Ala. R. R. Co. v. Morris*, 65 Ala. 193; *State v. Brown*, 19 Fla. 563; *Morrison v. State*, 40 Ark. 448; *State v. Wilson*, 12 Lea, 246; *Tillman v. Cocke*, 9 Baxt. 429; *Johnson v. Winslow*, 63 N. C. 552; *Harlan v. Sigler*, Morris, 39; *State v. Marsh*, 37 Ark. 356; *State v. Kantler*, 33 Minn. 69; S. C., 6 Am. & Eng. Corp. Cas. 169; *American Print Works v. Lawrence*, 23 N. J. L. 590, 17 Am. Dec. 420; *Lea v. Bumm*, 83 Pa. St. 237; *Bittle v. Stuart*, 34 Ark. 224; *National Bank v. Barber*, 24 Kan. 534; *Darrah v. McKim*, 3 Hun, 337; *Berry v. R. R. Co.*, 41 Md. 446, 20 Am. Rep. 69; *Fleischner v. Chad-*

wick, 5 Ora. 152; *Village of Deposit v. Vail*, 5 Hun, 310; *State v. Clarke*, 54 Mo. 17; *Turner v. Board of Commissioners*, 27 Kan. 314; *State v. Wheeler*, 25 Conn. 290; *People ex rel. v. Kenney*, 96 N. Y. 204; *Dur- yee v. Mayor, etc.*, id. 477; *Matter of Met. Gas Light Co.*, 85 id. 527; *Matter of Sackett, etc. Streets*, 74 id. 95; *Matter of Ryers*, 72 id. 1; *Tiernan v. Rinker*, 103 U. S. 123, 26 L. Ed. 103; *Powell v. State*, 69 Ala. 10; *State ex rel. v. Tuttle*, 53 Wis. 45, 9 N. W. 791; *State v. Newton*, 59 Ind. 178; *Tripp v. Overocker*, 7 Colo. 72, 1 Pac. 595; *Gunnison Co. Com. v. Owen*, 7 Colo. 467; *People v. Jobs*, id. 475; *People v. Hall*, 8 id. 485, 9 Pac. 34; *Cole v. Commissioners*, 78 Me. 532; *Re Groff*, 21 Neb. 647; *Frazer, Ex parte*, 54 Cal. 94. In *Curtis v. Leavitt*, 15 N. Y. 96,

⁴ *Yerby v. Cochrane*, 101 Ala. 541, 14 So. 355; *Randolph v. Builders' and Painters' Supply Co.*, 106 Ala. 501, 17 So. 721; *Orange County v. Harris*, 97 Cal. 600, 32 Pac. 594; *Ballentine v. Willey*, 3 Idaho, 496; *Duggan v. Peoria, etc. Ry. Co.*, 42 Ill. App. 536; *Tolley v. Courter*, 93 Mich. 469, 53 N. W. 620; *Attorney-General v. Gramlich*, 129 Mich. 630, 89 N. W. 446; *Board of Education v. Moses*, 51 Neb. 288, 70 N. W. 946; *Ex parte Hewlett*, 22 Nev. 333, 40 Pac. 96; *Johnson v. State*, 59 N. J. L. 271, 35 Atl. 787; *Johnson v. State*, 59 N. J. L. 535, 37 Atl. 949, 38 L. R. A. 373; *Smeath v. Mager*, 64 N. J.

L. 94, 44 Atl. 983; *McArdle v. Jersey City*, 66 N. J. L. 590, 49 Atl. 1013, 88 Am. St. Rep. 496; *New York v. Manhattan Ry. Co.*, 143 N. Y. 1, 37 N. E. 494; *Rathbone v. Wirth*, 150 N. Y. 459, 44 N. E. 1124, 34 L. R. A. 408; *Angell v. Cass County*, 11 N. D. 265, 91 N. W. 72; *State v. Bradt*, 103 Tenn. 584, 53 S. W. 942; *Kimbrough v. Barnett*, 93 Tex. 301, 55 S. W. 120; *Skagit County v. Stiles*, 10 Wash. 388, 39 Pac. 116; *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 22 S. C. Rep. 431, 46 L. Ed. 679; *Loeb v. Columbia Tp.*, 91 Fed. 87; *Union Sewer Pipe Co. v. Connelly*, 99 Fed. 854.

If one provision of an enactment is invalid and the others valid, the latter are not affected by the void provision, unless they are plainly dependent upon each other, and so inseparably connected that they cannot be divided without defeating the object of the statute.⁴ And the converse is true. The vicious part must be distinct and separable, and, when stricken out, enough must remain to be a complete act, capable of being carried into effect, and sufficient to accomplish the object of the law as passed, in accordance with the intention of the legislature.⁵ It should be confined to

Comstock, J., said: "A doctrine which is expressed in the words 'void in part, void *in toto*,' has often found its way into books and judicial opinions as descriptive of the effect which a statute may have upon deeds and other instruments which have in them some forbidden vice. There is, however, no such general principle of law as the maxim would seem to indicate. On the contrary, the general rule is that if the good be mixed with the bad it shall nevertheless stand, provided a separation can be made. The exceptions are, first, where a statute by its express terms declares the whole deed or contract void on account of some provision which is unlawful; and second, where there is some all-pervading vice, such as fraud, for example, which is condemned by the common law, and avoids all parts of the transaction because all are alike infected."

⁴ Duryee v. Mayor, etc., 96 N. Y. 477; Re Groff, 21 Neb. 647.

⁵ The following cases sustain the general principles stated, and in each case the act in question was held to be severable and the valid

part was sustained as an act complete in itself: Bradley v. State, 99 Ala. 177, 13 So. 415; Kentz v. Mobile, 120 Ala. 623, 24 So. 952; Browne v. Mobile, 122 Ala. 159, 25 So. 223; State v. Davis, 130 Ala. 148, 30 So. 344, 89 Am. St. Rep. 23; Leep v. Railway Co., 58 Ark. 407, 25 S. W. 75, 41 Am. St. Rep. 109, 23 L. R. A. 264; Gray v. Matheny, 66 Ark. 36, 48 S. W. 678; McGowan v. McDonald, 111 Cal. 57, 43 Pac. 418, 52 Am. St. Rep. 149; Murphy v. Pacific Bank, 119 Cal. 334, 51 Pac. 317; Johnson v. Tautphaus, 127 Cal. 605, 60 Pac. 172; English v. State, 31 Fla. 340, 12 So. 689; State v. Dillon, 32 Fla. 545, 14 So. 383; Ex parte Pitts, 35 Fla. 149, 17 So. 76; Irwin v. Gregory, 86 Ga. 605, 13 S. E. 120; Gainesville v. Simmons, 96 Ga. 477, 23 S. E. 508; People v. Illinois State Reformatory, 148 Ill. 413, 36 N. E. 76; Ritchie v. People, 155 Ill. 98, 40 N. E. 454, 462, 46 Am. St. Rep. 315, 29 L. R. A. 79; People v. Knopf, 183 Ill. 410, 56 N. E. 155; Smith v. McClain, 146 Ind. 77, 45 N. E. 41; Townsend v. State, 147 Ind. 624, 47 N. E. 19, 63 Am. St. Rep. 477, 37 L. R. A. 294; State v. Ray, 153 Ind. 334, 54 N. E. 1067; Missouri, Kan.

the same limits and still subject to the intended qualifications.⁶

§ 297 (170). **General rules and principles.**—It may be laid down generally as a sound proposition that one part of a statute cannot be declared void and leave any other part in force, unless the statute is so composite, consisting of such separable parts, that, when the void part is eliminated, another living, tangible part remains, capable by its own terms of being carried into effect, consistently with the intent of the legislature which enacted it in connection with the void

& Tex. Ry. Co. v. Simonson, 64 Kan. 802, 68 Pac. 653, 91 Am. St. Rep. 248; Hardy v. Kingman County, 65 Kan. 111, 68 Pac. 1078; State v. Goff, 106 La. 270, 30 So. 844; Graham v. Muskegon County Clerk, 116 Mich. 571, 74 N. W. 729; Moreland v. Millen, 126 Mich. 381, 85 N. W. 882; Belding Land & Imp. Co. v. Belding, 128 Mich. 79, 87 N. W. 113; Stotz v. Thompson, 44 Minn. 271, 46 N. W. 410; Reimer v. Newel, 47 Minn. 237, 49 N. W. 865; State v. Sullivan, 72 Minn. 126, 75 N. W. 8; State v. Justus, 85 Minn. 279, 88 N. W. 759, 89 Am. St. Rep. 550; Northwestern Mut. Life Ins. Co. v. Lewis & Clark County, 28 Mont. 484; Moore v. State, 63 Neb. 345, 88 N. W. 514; State v. Humboldt County Com'rs, 21 Nev. 235, 29 Pac. 974; State v. Westerfield, 23 Nev. 468, 49 Pac. 119; State v. Franklin, 59 N. J. L. 106, 84 Atl. 1088; Lawton v. Steele, 119 N. Y. 226, 23 N. E. 878, 16 Am. St. Rep. 813, 7 L. R. A. 134; Matter of New York & L. I. Bridge Co., 148 N. Y. 540, 42 N. E. 1088; Bohmer v. Haffen, 161 N. Y. 390, 55 N. E. 1047; McCless v. Meekins, 117 N. C. 84, 23 S. E. 99; Rothermel v. Meyerle, 136 Pa. St. 250, 20 Atl. 583, 9 L. R. A. 366; Commonwealth

v. Moir, 199 Pa. St. 534, 49 Atl. 351, 85 Am. St. Rep. 801; Philadelphia, M. & S. St. Ry. Co., Petitioner, 203 Pa. St. 354, 53 Atl. 191; Treasurer v. Bank, 47 Ohio St. 503, 25 N. E. 697; State v. Russell, 20 Ohio C. C. 551; State v. Clark, 15 R. L. 383, 5 Atl. 635; State v. Cummins, 99 Tenn. 667, 42 S. W. 880; Grebble v. Wilson, 101 Tenn. 612, 49 S. W. 736; Zwerneman v. Van Rosenberg, 76 Tex. 523, 13 S. W. 485; People v. Clayton, 4 Utah, 421, 11 Pac. 206; State v. Kibling, 63 Vt. 686, 22 Atl. 613; Carter v. Commonwealth, 96 Va. 791, 32 S. E. 780, 45 L. R. A. 310; Danville v. Hatcher, 101 Va. 523; State v. Henry, 28 Wash. 38, 68 Pac. 368; Baker v. State, 80 Wis. 416, 50 N. W. 518; Bittenhaus v. Johnston, 92 Wis. 588, 66 N. W. 805, 32 L. R. A. 380; Field v. Clark, 143 U. S. 649, 12 S. C. Rep. 495, 36 L. Ed. 294; Reagan v. Farmers' L. & T. Co., 154 U. S. 362, 14 S. C. Rep. 1047, 38 L. Ed. 1014; Busch v. Webb, 122 Fed. 655.

⁶ Meshmeier v. State, 11 Ind. 485; Burkholtz v. State, 16 Lea, 71; Bittle v. Stuart, 34 Ark. 224; Allen v. Louisiana, 103 U. S. 80, 26 L. Ed. 318; People v. Porter, 90 N. Y. 68.

part. "If the legislative purpose as expressed in the valid portions of the act can be accomplished, independently of the unconstitutional portion, and, considering the entire act, it cannot be said that the legislature would not have passed the valid portion had it been known that the invalid portion must fail, effect will be given to so much as is good."⁷

On the other hand, if it is obvious that the legislature did not intend that any part should have effect unless the whole, including the part held void, should operate, then holding a part void invalidates the entire statute. "If all the provisions of an act are so interwoven as to be incapable of distinct separation, or are of such a character that it cannot be said that the legislature intended that the valid parts shall be enforced if the other parts fail, the entire law will be held to be invalid."⁸ If the obnoxious section or part is of such import that the other sections or parts without it would cause results not contemplated or desired by the legislature, then the entire statute must be held inoperative.⁹

If a statute attempts to accomplish two or more objects, or to deal with two or more independent subjects, and the provisions as to one are void, it may still be in every respect complete and valid as to any other.¹⁰ Illustrations of this

⁷ *English v. State*, 81 Fla. 340, 12 So. 689. "If the court can see and say that the act, in the form in which it is left with the obnoxious portions excised, is still such an act as it may be presumed that the legislature would have passed had it known that certain provisions were void, the remainder, under well-settled rules of construction, may stand." *Dwyer v. Parker*, 115 Cal. 544, 47 Pac. 372. See also *Harper v. State*, 109 Ala. 28, 19 So. 857; *Harper v. State*, 109 Ala. 66, 19 So. 901; *Newman v. People*, 28 Colo. 300, 47 Pac. 378; *Branch v. Lewerenz*, 75 Conn. 319, 58 Atl. 658;

Ballentine v. Willey, 8 Idaho, 496, 31 Pac. 994; *Chicago, B. & Q. R. R. Co. v. Jones*, 149 Ill. 361, 37 N. E. 247, 41 Am. St. Rep. 278, 24 L. R. A. 141; *Rothermel v. Meyerle*, 136 Pa. St. 250, 20 Atl. 583, 9 L. R. A. 366.

⁸ *Johnson v. State*, 59 N. J. L. 271, 273, 35 Atl. 787; S. C. affirmed, 59 N. J. L. 535, 37 Atl. 949, 38 L. R. A. 373.

⁹ *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 565, 22 S. C. Rep. 431, 46 L. Ed. 679.

¹⁰ *People v. Cooper*, 83 Ill. 585; *Towles, Ex parte*, 48 Tex. 413; *State v. Clinton*, 28 La. Ann. 201; *Wells, Ex parte*, 21 Fla. 280; *Hinze v. Peo-*

proposition are furnished by numerous cases where acts are violative of the constitutional injunction that an act shall relate to but one subject, which shall be stated in the title. If the act embraces more than one subject, and one is stated in the title, it is valid as to that subject if complete in itself, but void as to any other. The elimination of the latter leaves a constitutional act, where there is no interdependence between the subjects.¹¹ If the matter of the act foreign to the subject stated in the title is divisible from that which is clearly within the title, and the latter can stand and have effect without the former, then only so much of the act as is not embraced in the title is void.¹² But otherwise the whole act is void.¹³

ple, 92 Ill. 406; *Lombard v. Antioch College*, 60 Wis. 459, 19 N. W. 367; *Sparrow v. Commissioner of Land Office*, 56 Mich. 567, 23 N. W. 315; *People v. Luby*, 56 Mich. 551, 23 N. W. 218; *Bittenhaus v. Johnston*, 92 Wis. 588, 66 N. W. 805, 32 L. R. A. 380; *Field v. Clark*, 143 U. S. 649, 12 S. C. Rep. 495, 36 L. Ed. 294.

¹¹ *People v. Hall*, 8 Colo. 485, 9 Pac. 84; *State v. Hurds*, 19 Neb. 317; *Whited v. Lewis*, 25 La. Ann. 568; *Gibson v. Belcher*, 1 Bush, 145; *Jones v. Thompson*, 12 id. 394; *Fuqua v. Mullen*, 13 Bush, 467; *Harris v. Supervisors*, 33 Hun, 279; *Mississippi, etc. Co. v. Prince*, 84 Minn. 79; *Municipality No. 8 v. Michoud*, 6 La. Ann. 605; *State v. Exnicius*, 33 id. 253; *State v. Crowley*, 33 id. 782; *State v. Dalon*, 35 id. 1141; *Dorsey's Appeal*, 72 Pa. St. 192; *Thomason, Ex parte*, 16 Neb. 238; *Davis v. State*, 7 Md. 151.

¹² *Yerby v. Cochrane*, 101 Ala. 541, 14 So. 355; *Elliott v. State*, 91 Ga. 694, 17 S. E. 1004; *State v. Ferguson*, 104 La. 249, 28 So. 917, 81 Am. St. Rep. 123; *State v. Atkins*,

¹² *Unity v. Burrage*, 103 U. S. 447, 26 L. Ed. 405; *Moore, Ex parte*, 62 Ala. 471; *Walker v. State*, 49 id. 329; *Lowndes County v. Hunter*, 49 id. 507; *Shields v. Bennett*, 8 W. Va. 74; *Matter of Sackett St.*, 74 N. Y. 95; *Mewherter v. Price*, 11 Ind. 199; *Bucky v. Willard*, 16 Fla. 330; *State v. Wilson*, 7 Ind. 516; *Packet Co. v. Keokuk*, 95 U. S. 80, 24 L. Ed. 377; *Matter of De Vaucene*, 31 How. Pr. 341; *Harris v. Supervisors*, 33 Hun, 279; *Rader v. Township of Union*, 39 N. J. L. 509; *Colwell v. Chamberlin*, 43 id. 387; *Matter of Van Antwerp*, 56 N. Y. 261; *People ex rel. v. Briggs*, 50 id. 553; *Fleischner v. Chadwick*, 5 Ore. 152; *Matter of Paul*, 94 N. Y. 497; *Dewhurst v. City of Allegheny*, 95 Pa. St. 487; *Allegheny Co. Home's Case*, 77 Pa. St. 77; *Lea v. Bumm*, 88 Pa. St. 237; *Town of Fishkill v. Fishkill, etc. Plk. R. Co.*,

104 La. 37, 28 So. 919; *State v. Walker*, 105 La. 492, 29 So. 973; *Tolley v. Courter*, 93 Mich. 469, 53 N. W. 620; *Trumble v. Trumble*, 87 Neb. 340, 55 N. W. 869.

A corporate charter is not entirely vitiated because it provides unconstitutionally for the exercise of the power of eminent domain for certain purposes,¹⁴ or unconstitutionally restricts the right to vote for officers.¹⁵ Parts relating to mere detail incident to the main purpose of an act may be stricken out without prejudice to the remainder of it, which contains valid provisions amply sufficient to enable the corporation to fully perform all its functions, unless vital to the main purpose as means or as compensation.¹⁶ Where a new offense is created and procedure for punishment provided, if the latter is invalid, and there are general laws under which prosecutions for such an offense could be conducted, the invalidity of the part relating to the procedure will not affect the part creating the offense.¹⁷ An act re-

22 Barb. 634; *State v. Clarke*, 54 Mo. 17; *Savannah, etc. Ry. Co. v. Geiger*, 21 Fla. 669, 58 Am. Rep. 697; *Callaghan v. Chipman*, 59 Mich. 610, 26 N. W. 806; *State v. Persinger*, 76 Mo. 346; *Stiefel v. Maryland Institute*, 61 Md. 144; *Wynkoop v. Cooch*, 89 Pa. St. 450; *Ex parte Cowert*, 92 Ala. 94, 9 So. 225; *Bradley v. State*, 99 Ala. 177, 13 So. 415; *Harper v. State*, 109 Ala. 28, 19 So. 857; *Harper v. State*, 109 Ala. 66, 19 So. 901; *State v. Davis*, 130 Ala. 148, 30 So. 344, 89 Am. St. Rep. 23; *Cullen v. Glendora Water Co.*, 113 Cal. 503, 89 Pac. 769, 45 Pac. 822, 1047; *Hancock v. State*, 114 Ga. 439, 40 S. E. 317; *Ritchie v. People*, 155 Ill. 98, 40 N. E. 454, 462, 46 Am. St. Rep. 315, 29 L. R. A. 79; *Dixon v. Poe*, 159 Ind. 492, 65 N. E. 518; *Steenken v. State*, 88 Md. 703, 42 Atl. 212; *Belding Land & Imp. Co. v. Belding*, 128 Mich. 79, 87 N. W. 118; *State v. County Court*, 102 Mo. 531, 15 S. W. 79; *State v. Courtney*, 27 Mont. 378, 71 Pac. 308; *State v.*

Humboldt County Com'rs, 21 Nev. 235, 29 Pac. 974; *Jones v. Morristown*, 66 N. J. L. 488, 49 Atl. 440; *Parfitt v. Ferguson*, 8 App. Div. 176, 38 N. Y. S. 466; *Commonwealth v. Ayers*, 2 Pa. Supr. Ct. 352.

¹⁴ *Morgan v. Monmouth Plank R. Co.*, 26 N. J. L. 99; *Matter of Village of Middleton*, 82 N. Y. 196.

¹⁵ *State ex rel. v. Tuttle*, 53 Wis. 45, 9 N. W. 791; *People ex rel. v. Kenney*, 96 N. Y. 294.

¹⁶ *Id.*; *Phillips v. Mayor, etc.*, 1 Hilt. 483; *State v. Elizabeth*, 40 N. J. L. 278; *Wakeley v. Mohr*, 15 Wis. 609; *State v. Rosenstock*, 11 Nev. 128; *Robinson v. Bidwell*, 22 Cal. 379; *Board of Com. v. Silvers*, 22 Ind. 491; *Turner v. Board of Commissioners*, 27 Kan. 314; *Matter, etc. of Village of Middleton*, 82 N. Y. 196; *Gordon v. Cornes*, 47 id. 617; *Zwerneman v. Van Rosenberg*, 76 Tex. 522, 13 S. W. 485. See *post*, § 298.

¹⁷ *State v. Newton*, 59 Ind. 173.

districting a county for supervisors was held valid, though it unconstitutionally provided that incumbents should hold over beyond their election terms until they could be immediately succeeded by supervisors elected under the act.¹⁸ The powers of a judicial officer are so separable and independent that a grant of them may be void as to one part or subject and good as to others.¹⁹ An act providing for impounding cattle taken *damage feasant*, and for detention of them until costs and damages are paid, may be sustained, though it include a void provision for a summary sale of such cattle.²⁰ A statute which prohibits traffic in intoxicating liquors, provides penalties therefor, and also forfeiture of liquors kept for sale, and the vessels in which the same are kept, is not an entirety. The forfeiture clause may be held unconstitutional, and the remainder nevertheless be sustained.²¹

In *Skagit County v. Stiles*²² the court says: "In determining whether part of an act can stand where another part has been held unconstitutional, a different rule as to presumptions is recognized from that which obtains where the whole act is being considered. The general rule that legislative acts are primarily presumed to be constitutional, and that all intendments are to be made in favor of the act to give it effect according to the intent of the lawmaking power, does not apply in such cases, as the upholding of part of an act is not favored; and where a part has been held unconstitutional, and the remaining portion comes up for consideration as to whether it can stand as an independent proposition, the presumptions are generally against it, and it will not be sustained unless that which remains is complete in itself and capable of being executed in accordance

¹⁸ *Christy v. Board of Supervisors*, 39 Cal. 8.

¹⁹ *Mayor, etc. v. Dechert*, 82 Md. 369; *Reid v. Morton*, 119 Ill. 118, 6 N. E. 414.

²⁰ *Rood v. McCargar*, 49 Cal. 117;

Wilcox v. Hemming, 58 Wis. 144, 159, 46 Am. Rep. 625.

²¹ *State v. Wheeler*, 25 Conn. 290; *Fisher v. McGirr*, 1 Gray, 1.

²² 10 Wash. 388, 39 Pac. 116.

with the apparent legislative intent wholly independent of that which was rejected."

§ 298 (171). **Rule when physical severance is impossible—Whether words and provisions can be severed in their application or scope.**—In most cases which arise where statutes are void in part only, the void part consists of distinct sections or provisions which can be literally and physically separated from the remainder, and such remainder can be read independently of the void part. But sometimes the provisions of a statute are valid as applied to certain cases or objects and invalid as applied to others, and the question arises whether such a statute is void *in toto* because it embraces too much, or whether it will be construed as applying only to the objects and cases within the power of the legislature and so upheld as valid legislation. The supreme court of New Hampshire, in an opinion often quoted with approval, lays down the following rule on the subject: "The rule of construction universally adopted is that when a statute may constitutionally operate upon certain persons, or in certain cases, and was not evidently intended to conflict with the constitution, it is not to be held unconstitutional merely because there may be persons to whom, or cases in which, it cannot constitutionally apply; but it is to be deemed constitutional and to be construed not to apply to the latter persons or cases, on the ground that courts are bound to presume that the legislature did not intend to violate the constitution."²³ The supreme court of Kansas says that the rule that only the invalid parts of a statute are ineffective is not confined to cases where the invalid parts consist of separable words, clauses, sentences or sections which may be literally stricken out, as it were, but that "it applies as well to exclude from the operation of the statute subjects and classes of things lying without the legislative intent, although comprehended within the

²³ Opinion of the Justices, 41 N. Northrup v. Hoyt, 81 Ore. 524, 49 H. 555, quoted and approved in Pac. 754.

general terms of the act, as it does to exclude parts of the verbal phraseology.”²⁴ In *Railroad Companies v. Schutte*²⁵ the court said the striking out of the void part is not necessarily “by erasing words, but it may be by disregarding the unconstitutional provision, and reading the statute as though that provision was not there.” Many cases are of the same purport.²⁶ These views are in accordance with the general rule that a statute will be so construed, if possible, as not to violate the constitution,²⁷ as well as with the rule that the words of an act will be restrained or limited by its title, so as not to apply to persons or cases not expressed in the title.²⁸

A statute which had the effect of regulating both state and interstate commerce in the same provision was held valid as to the former and void as to the latter.²⁹ But where such an act exacts a license fee of common carriers based upon the total amount of business done in each county, which was made up in part of interstate and in part of state

²⁴ *State v. Smiley*, 65 Kan. 240, 69 Pac. 199.

²⁵ 103 U. S. 118, 142, 26 L. Ed. 327.

²⁶ *Grimes v. Eddy*, 126 Mo. 168, 28 S. W. 756, 47 Am. St. Rep. 653, 26 L. R. A. 638; *State v. McGowan*, 138 Mo. 187, 39 S. W. 771; *Citizens' Nat. Bank v. Graham*, 147 Mo. 250, 48 S. W. 910; *State v. Mines*, 38 W. Va. 125, 18 S. E. 470; *State v. Fackler*, 91 Wis. 413, 64 N. W. 1029; *United States v. Central Pac. R. R. Co.*, 118 U. S. 235, 6 S. C. Rep. 1038, 30 L. Ed. 173; *Packet Co. v. Keokuk*, 95 U. S. 80, 24 L. Ed. 377; *Freight Tax Case*, 15 Wall. 232; *Supervisors v. Stanley*, 105 U. S. 305, 313, 314, 26 L. Ed. 1044; *McCullough v. Virginia*, 173 U. S. 102, 19 S. C. Rep. 134, 43 L. Ed. 382. And see *Austin v. The Aldermen*, 7 Wall. 694, 19 L. Ed. 224; *Bull v. Rowe*, 18 S. C. 855; *McCready v.*

Sexton, 29 Iowa, 356, 4 Am. Rep. 214; *Hiss v. Baltimore, etc. R. R. Co.*, 52 Md. 242, 36 Am. Rep. 371; *Franklin v. Westfall*, 27 Kan. 614; *Western Union Tel. Co. v. State*, 62 Tex. 630.

²⁷ *Ante*, § 83; *post*, § 498.

²⁸ *State v. Hartford Fire Ins. Co.*, 99 Ala. 221, 18 So. 362; *Bell v. State*, 91 Ga. 227, 18 S. E. 288; *Comer v. State*, 103 Ga. 69, 29 S. E. 501; *Pittsburg v. Reynolds*, 48 Kan. 360, 29 Pac. 757; *Commonwealth v. Barney*, 24 Ky. L. R. 2352, 74 S. W. 181; *Allen v. Bernards Tp.*, 57 N. J. L. 303, 31 Atl. 219; *State v. State*, 57 N. J. L. 348, 30 Atl. 480; *Cooper v. Springer*, 65 N. J. L. 594, 48 Atl. 605.

²⁹ *State v. Scott*, 98 Tenn. 254, 39 S. W. 1, 36 L. R. A. 461; *Austin v. State*, 101 Tenn. 563, 48 S. W. 305, 70 Am. St. Rep. 703, 50 L. R. A. 478; *Freight Tax Case*, 15 Wall. 232.

business, it was held that there could be no separation, and the provision was held void in its entirety.³⁰ Where the constitution forbade an appropriation for a longer term than two years, a statute making an appropriation for a longer term was held good for two years.³¹ A statute authorizing municipalities to become indebted beyond the constitutional limit was held effectual to authorize the creation of a debt not exceeding the limit fixed by the constitution.³² The constitution of Nebraska authorized the commitment to the reform school of children under sixteen years of age. A statute authorized the commitment of children under eighteen. It was held valid as to those within the constitutional age.³³ Where the constitution limits the term of an office to a specified number of years, there is a difference of opinion as to whether an act creating an office and providing for a longer term is valid for the maximum term fixed by the constitution, or whether it is void in that respect. Some courts hold to the former alternative.³⁴ Others hold

³⁰ *State v. Northern Pac. Express Co.*, 27 Mont. 419, 71 Pac. 404.

³¹ *Pickle v. Finley*, 91 Tex. 484, 44 S. W. 480.

³² *Dunn v. Great Falls*, 13 Mont. 58, 31 Pac. 1017; *Germania Sav. Bank v. Darlington*, 50 S. C. 837, 27 S. E. 846.

³³ *Scott v. Flowers*, 61 Neb. 620, 85 N. W. 857. In this case the court says: "The legislature has here clearly expressed its will, but it has gone too far; it has transcended the limits of its authority. It has, in an unmistakable manner, signified its purpose not only to authorize the commitment to the reform school of certain children under the age of sixteen years, but, also, children beyond that age who, although guiltless of crime, have evinced a criminal tendency and are without proper parental re-

straint. The legislature having declared its will, and its command to the courts being in part valid and in part void, the decisive question is, shall section 5 be given effect so far as it is in accord and agreement with the paramount law? It seems that both good sense and judicial authority require that the question should receive an affirmative answer." p. 624.

³⁴ *Sinking Fund Com'rs v. George*, 104 Ky. 260, 47 S. W. 779, 84 Am. St. Rep. 454; *State v. Stuht*, 52 Neb. 209, 71 N. W. 941. In the former case an act created a board of penitentiary commissioners and provided that, of the first board, one should hold for two years, one for four years and one for six years and that their successors should be elected for six years. The constitution forbade the creation of offices

that the provision fixing the term is void altogether. Of these, some, again, hold that the remainder of the act is valid, and that the officer provided for holds during the pleasure of the appointing power,³⁵ while others hold the entire act void.³⁶

A statute of Indiana regulating the liability of railroads and other corporations and doing away with the fellow-servant rule was held by the supreme court of that state to be valid as to railroads whether valid as to other corporations or not.³⁷ The claim was that it was class legislation as applied to other corporations, as it would subject individuals and corporations in the same business and under the same circumstances to different rules of liability. The same statute was sustained as to railroads by the supreme

with a longer term than four years. The act was held to create a four-year term and to be valid as so modified. The court says: "The language employed shows that the general assembly was willing that one of the commissioners should hold his office for six years—two years longer than the constitution will permit. As the general assembly expressed a willingness that one of the commissioners should hold for two years longer than the constitution permits, it is certainly reasonable to conclude that it was the will of that body that the commissioners should hold for four years, as this term is necessarily included in the longer one which it fixed. To hold the act void in so far as it makes the term six years instead of four, still the balance of the act is complete and enforceable. The purpose and intent of the general assembly, that the commissioners should manage and control the penitentiaries, can be effectuated

by eliminating from the act that part which attempted to make terms six instead of four years." And see *People v. Burch*, 84 Mich. 408, 47 N. W. 765.

³⁵ *People v. Perry*, 79 Cal. 105, 21 Pac. 423; *Lewis v. Lewelling*, 53 Kan. 201, 36 Pac. 351, 23 L. R. A. 510. In the former case the court says: "But we know of no precedent for holding that a clause of a statute, which as enacted is unconstitutional, may be changed in meaning in order to give it some operation, when admittedly it cannot operate as the legislature intended. This would, it seems to us, be making a law, and not merely correcting an excess of authority." p. 115.

³⁶ *State v. Harris*, 19 Nev. 222, 8 Pac. 462; *Kimbrough v. Barnett*, 93 Tex. 301, 55 S. W. 120.

³⁷ *Pittsburgh, C., C. & St. L. Ry. Co. v. Montgomery*, 152 Ind. 1, 49 N. E. 582, 71 Am. St. Rep. 301.

court of the United States on the ground that the effect of the Indiana decision was to hold that the statute was capable of severance.³⁸ A similar statute was held void altogether by the supreme court of Mississippi in a very elaborate opinion in which many cases are reviewed. The statute in question originally applied only to railroads and was amended so as to apply to all corporations. It was argued that it should be construed as applicable only to corporations engaged in a hazardous business like that of railroads and as so restricted should be sustained. The court held that it could not limit the statute in this manner, and in respect to the doctrine of severance says: "The difficulty is in finding the true test as to when a statute may be severed; that test clearly is this: That whenever the court finds on the face of a statute a number of different provisions, some constitutional and some unconstitutional, there it may sever, if they are not interdependent, between these provisions, striking out the unconstitutional; and, let it be marked, that in every such case there is something to sever between on the face of the statute. That is what is meant by the severance of a statute. But whenever a court, in order to uphold the provisions of a statute as constitutional, has to interpolate in such statute provisions not put there by the legislature, in order by such interpolation to make the provision which the legislature did put there constitutional, this is no case of severance in any proper legal sense; nor is it in any legal or logical sense a proper limitation of the provisions which are in a statute by judicial construction. Such action by a court is nothing less than judicial legislation pure and simple."³⁹

§ 299 (172). **The same question in case of criminal statutes.**—But the rule is more stringent in regard to criminal statutes. As said by Johnson, J., in *Wynehamer v. People*:⁴⁰ "Laws in relation to civil rights are sometimes held

³⁸ *Tullis v. Lake Erie & W. R. R. Co.*, 175 U. S. 340, 20 S. C. Rep. 136, 44 L. Ed. 192. ³⁹ *Ballard v. Miss. Cotton Oil Co.*, 81 Miss. 507, 573, 574, 34 So. 533.

⁴⁰ 18 N. Y. 378, 425.

to be unconstitutional, in so far as they affect the rights of certain persons, and valid in respect to others. This is done mainly upon the ground that the courts will not construe them to relate to such cases as the legislature had not power to act upon. To statutes creating criminal offenses, such a rule of construction ought not to be applied, and I cannot find any trace of its ever having been applied. It is of the highest importance to the administration of criminal justice that acts creating crimes should be certain in their terms and plain in their application; and it would be in no small degree unseemly that courts should be called upon, in administering the criminal law, to adjudge an act creating offenses at one time valid, and at another time void. It must, I think, stand as it has been enacted, or not stand at all." A law void as to certain property (intoxicating liquors) already possessed at the passage of the law, but which would be valid if confined to such property subsequently acquired, is wholly void, being general so as to include both in penal destruction of value.⁴¹ Where the constitution fixed the limit of punishment by fine imposed by a justice of the peace at \$3, and the legislature provided for a fine not exceeding \$20 in such cases, the statute was held valid to the constitutional limit of \$3, and void beyond that sum.⁴² The excess was easily ascertained, and divisible from the amount authorized. And though the void part could not be literally stricken out without changing the letter of the statute, it could be excluded with no less certainty and precision.

§ 300 (173). In *United States v. Reese*⁴³ it was held that the power of congress to legislate at all upon the subject of voting at state elections rests upon the fifteenth amendment to the federal constitution, and can be exercised by providing a punishment only when the wrongful refusal to receive the vote of a qualified elector at such election is because of his race, color or previous condition of servitude. A con-

⁴¹ *Wynehamer v. People*, 13 N. Y. 378, 425.

⁴² *Clark v. Ellis*, 2 Blackf. 8.

⁴³ 92 U. S. 214, 23 L. Ed. 566.

gressional enactment not confined in its operation to unlawful discrimination on account of race, color or previous condition of servitude transcends the constitutional limit, and is unauthorized. Waite, C. J., said: "We are therefore directly called upon to decide whether a penal statute enacted by congress, with its limited powers, which is in general language broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, can be limited by judicial construction so as to make it operate only on that which congress may rightfully prohibit and punish. For this purpose we must take these sections of the statute as they are. We are not able to reject a part which is unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there. Each of the sections must stand as a whole or fall altogether. The language is plain. There is no room for construction, unless it be as to the effect of the constitution. The question, then, to be determined is whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only. It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government. The courts enforce the legislative will when ascertained, if within the constitutional grant of power. . . . To limit this statute in the manner now asked would be to make a new law, not to enforce an old one. That is no part of our duty." This view has been repeatedly approved in subsequent cases.⁴⁴ Where

⁴⁴ *United States v. Harris*, 106 U. S. 629, 27 L. Ed. 290; *Trade Mark Cases*, 100 U. S. 82, 25 L. Ed. 550; *Virginia Coupon Cases*, 114 U. S. 305, 29 L. Ed. 185; *In Baldwin v. Franks*, 120 U. S.

a statute forbade the sale of all kinds of intoxicating liquors, and was void as to some such liquors, it was held to be wholly void.⁴⁵ To be separable for the purpose of sustain-

678, 7 S. C. Rep. 656, 763, 30 L. Ed. 766, the plaintiff had been in custody on a charge of violating an act of congress which provided for punishment of those who "in any state or territory conspire, . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws or of equal privileges or immunities under the laws." Sec. 5519, R. S. U. S. Waite, C. J., said: "In *United States v. Harris*, *supra*, it was decided that this section was unconstitutional as a provision for the punishment of conspiracies of the character therein mentioned within a state. It is now said, however, that in that case the conspiracy charged was by persons in a state against a citizen of the United States and of the state, to deprive him of the protection he was entitled to under the laws of that state, no special rights or privileges arising under the constitution, laws or treaties of the United States being involved; and it is argued that although the section be invalid so far as such an offense is concerned, it is good for the punishment of those who conspire to deprive aliens of the right guaranteed to them in a state by the treaties of the United States. In support of this argument reliance is had on the well settled rule that a statute may be in part constitutional and in part unconstitutional, and that under some circumstances the part which is

constitutional will be enforced, and only that which is unconstitutional will be rejected. To give effect to this rule, however, the parts—that which is constitutional and that which is unconstitutional—must be capable of separation, so that each may be read by itself. This statute, considered as a statute punishing conspiracies in a state, is not of that character, for in that connection it has no parts within the meaning of the rule. Whether it is separable so that it can be enforced in a territory, though not in a state, is quite another question, and one we are not now called on to decide. It provides in general terms for the punishment of all who conspire for the purpose of depriving any person, or any class of persons, of the equal protection of the laws or of equal privileges or immunities under the laws. A single provision, which makes up the whole section, embraces those who conspire against citizens as well as those who conspire against aliens; those who conspire to deprive one of his rights under the laws of a state and those who conspire to deprive him of his rights under the constitution, laws or treaties of the United States. The limitation which is sought must be made, if at all, by construction, not by separation. This, it has often been decided, is not enough."

⁴⁵ *Elliott v. State*, 91 Ga. 694, 17 S. E. 1004; *Papworth v. State*, 108

ing the remainder of the act, such remainder must be complete in itself and sufficient to accomplish the legislative intent without aid from the void part.⁴⁶

§ 301 (174). **The main purpose being unconstitutional the whole act void.**—Where all the provisions of an act are connected as parts of a single scheme, the incidental or dependent provisions must fall with the failure of the main purpose.⁴⁷ That which is merely auxiliary to the main design must fall with the principal to which it is merely an incident.⁴⁸ If only one object is aimed at, and that is unconstitutional, and all the provisions are contributory to that object, and were enacted solely for that reason, the whole act is void.⁴⁹ An act provided for a new police district, and police justice, with exclusive jurisdiction not only of new offenses created by the same act, but of matters previously cognizable by other courts. As the creation of the new district and court were essential to accomplish the purpose of the act, and that part of it being held unconstitutional, the whole act was void.⁵⁰ Where the entire scheme must fail because of a want of power to enact it,

Ga. 36, 31 S. E. 402; *Harris v. State*, 114 Ga. 436, 40 S. E. 315.

⁴⁶ *Allen v. Louisiana*, 103 U. S. 80, 26 L. Ed. 813; *People v. Porter*, 90 N. Y. 68; *Hinze v. People*, 92 Ill. 406; *Towles, Ex parte*, 48 Tex. 413; *Bittle v. Stuart*, 84 Ark. 224; *Black v. Trower*, 79 Va. 123; *State v. Duke*, 42 Tex. 455.

⁴⁷ *Randolph v. Builders' & Painters' Supply Co.*, 106 Ala. 501, 17 So. 721; *Orange County v. Harris*, 97 Cal. 600, 32 Pac. 594; *Jones v. Jones*, 104 N. Y. 234, 10 N. E. 269; *Black v. Trower*, 79 Va. 123.

⁴⁸ *Virginia Coupon Cases*, 114 U. S. 270, 304, 5 S. C. Rep. 903, 29 L. Ed. 185.

⁴⁹ *Darby v. Wilmington*, 76 N. C.

133; *Eckhart v. State*, 5 W. Va. 515; *Brooks v. Hydoon*, 76 Mich. 273, 43 N. W. 1122; *Blades v. Board of Water Com'rs*, 122 Mich. 366, 81 N. W. 271; *State v. Stephens*, 146 Mo. 662, 48 S. W. 929, 69 Am. St. Rep. 625; *Grey v. Dover*, 62 N. J. L. 40, 40 Atl. 640; *Dover v. Grey*, 62 N. J. L. 647, 42 Atl. 674.

⁵⁰ *People v. Porter*, 90 N. Y. 68; *Reed v. Omnibus R. R. Co.*, 33 Cal. 212; *Kelley v. State*, 6 Ohio St. 269; *Sumter Co. v. Gainesville Nat. Bank*, 62 Ala. 464, 34 Am. Rep. 30; *State v. Chamberlin*, 37 N. J. L. 383; *Lathrop v. Mills*, 19 Cal. 513; *Dells v. Kennedy*, 49 Wis. 555, 6 N. W. 246, 381, 35 Am. Rep. 786; *Slinger v. Henneman*, 38 Wis. 504.

there can be no possible good in upholding an isolated provision which it was, perhaps, competent for the law-giver to enact, but which is unreasonable and unjust if left to stand alone.⁵¹

§ 302 (175). A law is entire where each part has a general influence over the rest, and all are intended to operate together for one purpose. In such case the invalidity of that purpose will affect the whole act.⁵² Nevertheless if only one incidental provision is invalid, that may not render the whole act void.⁵³ It is not entire in that sense.⁵⁴ Where a repeal of prior laws is inserted in an act in order to the unobstructed operation of such act, and it is held unconstitutional, the incidental provision for the repeal of prior laws will fall with it.⁵⁵ An act was passed to dissolve municipal corporations and provided the manner in which they might re-incorporate. The latter was the object of the enactment, and that being held unconstitutional the former was also invalid.⁵⁶ In such cases the object of the legislature is frustrated; when the void part is eliminated, there is not a complete act remaining expressive of the intent of the legislature and sufficient to carry it into effect.⁵⁷

⁵¹ *Pant v. Gibbs*, 54 Miss. 396, 411.

⁵² *Second Municipality v. Morgan*, 1 La. Ann. 111; *Powell v. State*, 69 Ala. 10; *Towles, Ex parte*, 48 Tex. 413; *Neely v. State*, 4 Baxt. 174.

⁵³ *Bradley v. State*, 99 Ala. 177, 13 So. 415; *Wilson v. State*, 136 Ala. 114, 33 So. 831; *Cullen v. Glendora Water Co.*, 113 Cal. 503, 39 Pac. 769, 45 Pac. 822, 1047; *Alexander v. Duluth*, 57 Minn. 47, 58 N. W. 866; *State v. County Court*, 102 Mo. 531, 15 S. W. 79; *State v. Franklin*, 59 N. J. L. 106, 34 Atl. 1088; *English & Scottish Am. Mort. Co. v. Hardy*, 93 Tex. 289, 55 S. W. 169.

⁵⁴ *Ante*, § 806.

⁵⁵ *Quinlon v. Rogers*, 12 Mich. 168; *State v. Commissioners*, 38 N. J. L. 320; *Childs v. Shower*, 18 Iowa, 261; *Randolph v. Builders' & Painters' Supply Co.*, 106 Ala. 501, 17 So. 721; *Carr v. State*, 127 Ind. 204, 26 N. E. 778, 11 L. R. A. 370; *Fesler v. Brayton*, 145 Ind. 71, 44 N. E. 37; *Barringer v. Florence*, 41 S. C. 501, 19 S. E. 745; *ante*, § 245. But see *Equitable Guaranty & Trust Co. v. Donahoe*, 3 Penn. (Del.) 191, 49 Atl. 372.

⁵⁶ *State v. Stark*, 18 Fla. 255; *Quinlon v. Rogers*, 12 Mich. 168.

⁵⁷ *Towles, Ex parte*, 48 Tex. 413.

§ 303 (176). Where the void part is inducement to or consideration of residue of act.—A leading case on this subject is *Warren v. Mayor, etc.*⁵⁸ In that case was involved the validity of a statute for the annexation of the city of Charlestown to the city of Boston. There were provisions intended to secure to the inhabitants of Charlestown certain constitutional rights of representation in the legislature until the time when they could enjoy them within the city of Boston. Some years must elapse before that time. The provisions to secure such rights during the interval were held unconstitutional, and therefore that the whole act was void. Shaw, C. J., said: "If [the parts of the act] are so mutually connected with and dependent on each other, as conditions, considerations or compensations for each other, as to warrant a belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional and connected must fall with them." "The object of the act is the annexation; the merger of one municipality and the enlargement of the other. This must necessarily affect the municipal and political rights of the inhabitants of both, guaranteed as they are by the constitution. The legislature manifestly felt it to be their duty, in accomplishing this object, to make provision for the preservation of these constitutional rights; if this object is not effectually accomplished, we have no ground on which to infer that the legislature would have sanctioned such annexation and its consequences. The various provisions of the act, therefore, all providing for the consequences of such annexation, more or less immediate or remote, are connected and dependent; the different provisions of the act look to one object and its incidents, and are so connected with each other that, if its essential provisions are repugnant to the constitution, the entire act must be deemed unconstitutional

⁵⁸ 2 Gray, 84.

and void." The doctrine of this case has been generally approved and acted upon.⁵⁹

"If the void part of the act is the compensation for or the inducement to the valid portion, so that, looking at the whole act, it is reasonably clear that the legislative body would not have enacted the valid portion alone, then the whole act will be held inoperative and void."⁶⁰ "It is not necessary that the invalid portion of an act of the legislature should have operated as the sole inducement to the passage of the law to render the same void. It will have that effect if the void part to any extent influenced the legislature in passing the statute."⁶¹

§ 304 (177). Same — Illustrations.—An act created an office and defined the powers and duties as well as fixed the compensation of the incumbent. The part which defined the powers and duties violated a constitutional rule of uniformity and was held void; this part being inducement to the residue fixing the compensation, the latter was held void also.⁶² So where a statute annexed to a city certain lands lying outside of its limits, but contained a proviso that the lands so annexed should be taxed at a different and less rate than other lands in the city, and this proviso was unconstitutional, the principle under consideration was

⁵⁹ *Commonwealth v. Hitchings*, 5 Gray, 482; *Jones v. Robbins*, 8 Gray, 329, 339; *State ex rel. v. Commissioners, etc.*, 5 Ohio St. 497; *State v. Sinks*, 42 Ohio St. 845; *Central Branch Union P. R. Co. v. Atchison, etc. R. R. Co.*, 28 Kan. 453; S. C., 10 Am. & Eng. R. R. Cas. 528; *Rood v. McCargar*, 49 Cal. 117; *State v. Stark*, 18 Fla. 255; *Sparhawk v. Sparhawk*, 116 Mass. 315, 320; *People v. Cooper*, 83 Ill. 585; *Hinze v. People*, 92 Ill. 406; *Conklin v. Hutchinson*, 65 Kan. 582, 70 Pac. 587; *State v. Bowen*, 54 Neb. 211, 74 N. W. 615; *Crawford Company v. Hathaway*, 60 Neb. 754, 84 N. W. 271; S. C. on rehearing, 61 Neb. 317, 85 N. W. 303; *Weaver v. Davidson County*, 104 Tenn. 315, 59 S. W. 1105; *Pollock v. Farmers' L. & T. Co.*, 158 U. S. 601, 15 S. C. Rep. 912, 39 L. Ed. 1108; *Robertson v. Preston*, 97 Va. 296, 33 S. E. 618.

⁶⁰ *Gilbert-Arnold Land Co. v. Superior*, 91 Wis. 353, 357, 64 N. W. 999.

⁶¹ *State v. Cornell*, 59 Neb. 417, 434, 81 N. W. 431.

⁶² *State ex rel. v. Dousman*, 28 Wis. 541.

held applicable, and the act was inoperative.⁶³ Where, however, a statute gave authority to municipalities competitively to make proposals to procure the location therein of a normal school, and gave power of local taxation to carry accepted proposals into effect, the latter provision was not affected by the unconstitutionality of the appropriation made in the act for the support of such schools. The court held that by establishing the schools and inducing contributions from others, the legislature assumed the duty of supporting them; the particular provision which it has attempted to make for that purpose being objectionable, it must be assumed that the legislature will regard it as their duty to provide a substitute.⁶⁴

§ 305 (178). **The valid part must be complete and accord with the legislative intent.**—One part of a statute may be distinct in the text and literally separable from the rest, and yet be indissolubly connected with it in the legislative intent. The mere fact that one part standing alone would be within the scope of the legislative power does not necessarily prove that it can be upheld when coupled with other matter. The court in *Meshmeier v. State*⁶⁵ uttered sound logic and sound law: "It would seem that the provisions of the statute held to be constitutional should be substantially the same when considered by themselves as when taken in connection with the other parts of the statute held to be unconstitutional; or, in other words, where that part of a statute which is unconstitutional so limits and qualifies the remaining portion that the latter, when stripped of such unconstitutional provisions, is essentially different, in its effect and operation, from what it would be were the whole law valid, it would seem that the whole law should fall. The remaining portion of the statute,

⁶³ *Slauson v. Racine*, 13 Wis. 898; *The latter overrules Westport v. Jones v. Memphis*, 101 Tenn. 188, 47 S. W. 138; *Copeland v. St. Joseph*, 126 Mo. 417, 29 S. W. 281; *State v. Wardell*, 153 Mo. 319, 54 S. W. 574. *McGee*, 128 Mo. 152, 30 S. W. 523, which holds a contrary doctrine.

⁶⁴ *Gordon v. Cornes*, 47 N. Y. 608.

⁶⁵ 11 Ind. 482, 485.

when thus stripped of its limitations and qualifications, cannot have the force of law, because it is not an expression of the legislative will. The legislature pass an entire statute, on the supposition, of course, that it is all valid and to take effect. The courts find some of its essential elements in conflict with the constitution; strip it of those elements, and leave the remaining portion mutilated and transformed into a different thing from what it was when it left the hands of the legislature. The statute thus emasculated is not a creature of the legislature; and it would be an act of legislation on the part of the court to put it in force."⁶⁶

§ 306 (179). **Effect of void exceptions, provisos, restrictions, etc.**—If, by striking out a void exception, proviso or other restrictive clause, the remainder, by reason of its generality, will have a broader scope as to subject or territory, its operation is not in accord with the legislative intent, and the whole would be affected and made void by the invalidity of such part.⁶⁷

An act of a general nature which the constitution required to have a uniform operation throughout the state excepted certain counties from its operation. This rendered the whole act void. After striking out the exception, if the general words gave the act operation in the excepted coun-

⁶⁶ To same effect: *State v. Davis*, 130 Ala. 148, 30 So. 344, 89 Am. St. Rep. 23; *Dwyer v. Parker*, 115 Cal. 544, 47 Pac. 372; *Kiernan v. Swan*, 131 Cal. 410, 63 Pac. 768; *State v. Dillon*, 32 Fla. 545, 14 So. 583; *Ritchie v. People*, 155 Ill. 98, 40 N. E. 454, 462, 46 Am. St. Rep. 315, 29 L. R. A. 79; *Smith v. McClain*, 146 Ind. 77, 45 N. E. 41; *Ex parte Hewlett*, 22 Nev. 333, 40 Pac. 96; *State v. Becker*, 3 S. D. 29, 51 N. W. 1018.

⁶⁷ *Marsh v. Hanley*, 111 Cal. 368, 43 Pac. 975; *Mathews v. People*, 203 Ill. 389, 67 N. E. 28; *State v. Mitchell*, 97 Me. 66, 53 Atl. 887; *State v.*

Sheriff, 48 Minn. 236, 51 N. W. 112, 31 Am. St. Rep. 650; *Low v. Rees Printing Co.*, 41 Neb. 127, 59 N. W. 362, 43 Am. St. Rep. 670, 24 L. R. A. 702; *Edmonds v. Herbrandson*, 2 N. D. 270, 50 N. W. 970, 14 L. R. A. 725; *State v. Buckley*, 60 Ohio St. 273, 54 N. E. 272; *Gilreath v. Greenville County*, 63 S. C. 75, 40 S. E. 1028; *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 22 S. C. Rep. 431, 46 L. Ed. 679; *Commonwealth v. Petranich*, 183 Mass. 217, 66 N. E. 807; *Schumacher v. McCalley*, 69 Ohio St. 500.

ties, such effect would be directly contrary to the expressed intent of the law-maker.⁶⁸ An act relating to elections in cities of certain classes excepted from its operation "Mansfield and cities of the fourth grade in the first class." This exception was held to make the act local and special, and it was also held that the exception could not be stricken out and the remainder of the act stand. The court says: "It is urged, however, that if this exception makes the act unconstitutional, the exception should be disregarded, and the act held valid as operating uniformly throughout the state. The answer to this is that the court has no law-making power, and cannot extend a statute over territory from which it is excluded by the general assembly. A court can hold a whole act unconstitutional because it is not broad enough, that is, because it is not of uniform operation throughout the state; but it cannot extend an act which is too narrow, so as to take in territory which was left out by the general assembly. In the case of an exception, the general assembly never enacted it in the excepted territory, and the court has no power to enact it therein. . . . There is a difference between an exception and a limitation. When a statute upon a subject of a general nature is made to extend to the whole state in one part thereof, and then in another part an attempt is made to limit its operation to territory less than the state, the limitation may be disregarded; because to give it effect would render the whole statute unconstitutional; and such construction should be given, when reasonable, as will uphold the statute rather than one which would defeat it."⁶⁹

The states were authorized by an act of congress to make regulations relative to pilots in bays, inlets, rivers, harbors

⁶⁸ Kelley v. State, 6 Ohio St. 269. To same effect, Marsh v. Hanley, 111 Cal. 368, 43 Pac. 975; Edmonds v. Herbrandson, 2 N. D. 270, 50 N. W. 970, 14 L. R. A. 725; Gilreath v. Greenville County, 63 S. C. 75, 40 S. E. 1028; State v. Supervisors, 62 Wis. 376, 379, 22 N. W. 572; Sprague v. Thompson, 118 U. S. 90, 30 S. C. Rep. 115. *Contra*, Turner v. Fish, 19 Nev. 295, 9 Pac. 884. See State v. Hanger, 5 Ark. 412.
⁶⁹ State v. Buckley, 60 Ohio St. 273, 296, 54 N. E. 272.

and ports of the United States, but they were expressly prohibited from making any discriminations in the rate of pilotage between vessels sailing between the ports of different states, and existing regulations making such discriminations were annulled and abrogated. A statute of Georgia excepted coasters in that state and coasters between the ports of that state and those of South Carolina and Florida. The exception was held a discrimination within the prohibition, and the court said if the exception only is affected the legislature of Georgia is made to enact what confessedly it never meant, by giving the statute an operation beyond the limits specified by the legislature. The exception, therefore, could not be rejected and the remainder held valid; the whole was treated as annulled and abrogated.⁷⁰ An act to provide for free employment agencies contained a section denying the benefit of the act to employers whose men were out on a strike or lockout. This exception was held to make the act class legislation and void *in toto*, as to strike out the section and leave the balance in force would give such employers the benefit of the act, contrary to the legislative intent.⁷¹ The same holding, in substance, was made in case of the following acts: An act which forbade peddling without a license, but provided that any resident of a town, having a place of business therein and paying taxes to the amount of twenty-five dollars on his stock in trade, might peddle in his own town without a license;⁷² an act making eight hours a legal day's work for all classes of mechanics, servants and laborers except those engaged in farm or domestic labor;⁷³ an anti-trust act which excepted from the operation of the act agricultural products and live stock in the hands of the producer or raiser.⁷⁴

⁷⁰ *Sprague v. Thompson*, 118 U. S. 90, 6 S. C. Rep. 988, 30 L. Ed. 115. Neb. 127, 59 N. W. 862, 48 Am. St. Rep. 670, 24 L. R. A. 702.

⁷¹ *Mathews v. People*, 202 Ill. 389, 67 N. E. 28.

⁷² *State v. Mitchell*, 97 Me. 66, 53 Atl. 887.

⁷³ *Low v. Rees Printing Co.*, 41

⁷⁴ *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 22 S. C. Rep. 481, 46 L. Ed. 679. In this case the court says: "The first section of the act here in question embraces by its

Two cases may be noticed which seem to hold a contrary doctrine. An act in relation to county and township government provided in section 60 that county and township officers should be elected every four years. The act divided counties into fifty-three classes, and section 170, as construed by the court, provided that the officers in the eighth class should be elected every two years. This was held to destroy the uniform operation of the act and to be void, but it was held that it could be stricken out and that the general provision could stand and apply to all counties.⁷⁵ An act forbade the use of any product of petroleum for illuminating purposes which would emit a combustible vapor at not less than 105°, except the gas be generated in closed reservoirs outside of the building to be lighted and except the lighter products of petroleum when used in the Welsbach hydrocarbon incandescent lamp. It appearing that there were other lamps constructed on the same principle as the Welsbach and equally safe, the last exception was held void as conferring an exclusive privilege. It had been the policy of legislation for twenty-five years to forbid the sale and use of lighter products of petroleum, and this was held to

terms all persons, firms, corporations or associations of persons who combine their capital, skill or acts for any of the purposes specified, while the ninth section declares that the act shall not apply to agriculturists or live-stock dealers in respect of their products or stock in hand. If the latter section be eliminated as unconstitutional, then the act, if it stands, will apply to agriculturists and live-stock dealers. These classes would in that way be reached and fined, when, evidently, the legislature intended that they should not be regarded as offending against the law even if they did combine their capital, skill or acts in respect of

their products or stock in hand. Looking then at all the sections together, we must hold that the legislature would not have entered upon or continued the policy indicated by the statute unless agriculturists and live-stock dealers were excluded from its operation and thereby protected from prosecution. The result is that the statute must be regarded as an entirety, and in that view it must be adjudged to be unconstitutional as denying the equal protection of the laws to those within its jurisdiction who are not embraced by the ninth section." p. 565.

⁷⁵ Hale v. McGettigan, 114 Cal. 112, 45 Pac. 1049.

show an intent that the restriction should continue though the exception was void, and the act was held valid with the exception eliminated.⁷⁶

A provision which states a contingency on which the act is or is not to take effect, whether it be the result of a popular vote or some other, is not independent and separable; for the intent of the law-maker is therein expressly declared, and the statute cannot on principle take effect contrary to that intent, though it be expressed in a section wholly unconstitutional.⁷⁷

§ 307. When act intended to operate as a whole.—If the parts of a statute are so connected as to warrant the conclusion that the legislature intended them as a whole, and would not have enacted the part held valid alone, when a part is unconstitutional, they are not separable; if one part is void the whole is void.⁷⁸ This conclusion should be based upon a consideration of the act and a comparison of its effects with and without the void part, by considering the connection and relative operation of the valid and invalid provisions.⁷⁹ Where two provisions of a statute are so dependent upon one another that one cannot stand alone without a manifest perversion of the legislative intent, and

⁷⁶ *State v. Santee*, 111 Iowa, 1, 82 N. W. 445, 82 Am. St. Rep. 489, 53 L. R. A. 763.

⁷⁷ *Barto v. Himrod*, 8 N. Y. 483, 59 Am. Dec. 506; *Thorne v. Cramer*, 15 Barb. 112; *Parker v. Commonwealth*, 6 Pa. St. 507, 47 Am. Dec. 480; *Meshmeier v. State*, 11 Ind. 482; *Lathrop v. Mills*, 19 Cal. 513. See *Santo v. State*, 2 Iowa, 165, 63 Am. Dec. 487; *State v. Copeland*, 3 R. I. 33.

⁷⁸ *Eckhart v. State*, 5 W. Va. 515; *Warren v. Mayor, etc.*, 2 Gray, 84; *State v. Sinka*, 42 Ohio St. 345; *People ex rel. v. Cooper*, 83 Ill. 595; *Hinze v. People*, 92 id. 406, 424; *State v. Pugh*, 43 Ohio St. 98, 1 N.

E. 439; *Rader v. Township of Union*, 39 N. J. L. 509; *Flanagan v. Plainfield*, 44 id. 118, 124; *State v. Commissioners*, 88 id. 320; *Western Union Tel. Co. v. State*, 62 Tex. 630; S. C., 18 Am. & Eng. Corp. Cas. 396; *Childs v. Shower*, 18 Iowa, 261; *Lathrop v. Mills*, 19 Cal. 513; *Central Br. Union Pac. R. R. Co. v. Atchison, etc. R. R. Co.*, 28 Kan. 453; S. C., 10 Am. & Eng. R. R. Cas. 528; *Moore v. New Orleans*, 32 La. Ann. 726; *Robinson v. Bidwell*, 22 Cal. 379.

⁷⁹ *Robinson v. Bidwell*, 22 Cal. 379; *Sumter Co. v. Gainesville Nat. Bank*, 62 Ala. 464, 84 Am. Rep. 30.

the other is void, the whole act is void.⁸⁰ Where one act is dependent upon another, which is held invalid, both fall.⁸¹

§ 308. **Miscellaneous acts held severable.**—An act for the incorporation and government of banks contained an invalid provision exempting stockholders from liability. It was held that this could be rejected and the balance sustained.⁸² In an act which provides for the establishment of new roads and an improvement of roads already established, an invalid provision for condemning the right of way for new roads will not affect the part as to the improvement of roads.⁸³ A revenue act contained a provision that, in counties of 125,000 inhabitants or over, the aggregate rate of taxation should not exceed five per cent. on the assessed value of the property, and that county, municipal and school taxes should be scaled *pro rata*, if necessary, so as to bring the aggregate rate of the county within this limit. This provision was held to be invalid and severable.⁸⁴ An appropriation bill provided for certain salaries *payable out of the general school fund*. The legislature had no power to make them so payable, but it was held that these words could be rejected and the remainder stand, the effect of which was to make the salaries payable out of the general fund.⁸⁵ An act provided for the appointment of three election commissioners by the governor and required him to

⁸⁰ *Burkholtz v. State*, 16 Lea, 71. And see generally the following cases in which the entire act was held void: *Yerby v. Cochrane*, 101 Ala. 541, 14 So. 355; *People v. Knopf*, 198 Ill. 840, 64 N. E. 1127; *State v. Walker*, 105 La. 492, 29 So. 973; *Trumble v. Trumble*, 37 Neb. 340, 55 N. W. 869; *State v. Stewart*, 52 Neb. 243, 71 N. W. 998; *State v. Bedell*, 67 N. J. L. 148, 50 Atl. 364; *Angell v. Cass County*, 11 N. D. 265, 91 N. W. 72; *Skagit County v. Stiles*, 10 Wash. 888, 39 Pac. 116; *Pollock v. Farmers' L. & T. Co.*, 158

U. S. 601, 15 S. C. Rep. 912, 39 L. Ed. 1108.

⁸¹ *Ballentine v. Willey*, 3 Idaho. 496, 21 Pac. 994; *People v. Olsen*, 204 Ill. 494, 68 N. E. 876.

⁸² *McGowan v. McDonald*, 111 Cal. 57, 43 Pac. 418, 52 Am. St. Rep. 149; *Murphy v. Pacific Bank*, 119 Cal. 334, 51 Pac. 317.

⁸³ *Seanor v. County Com'rs*, 13 Wash. 48, 42 Pac. 552.

⁸⁴ *People v. Knopf*, 183 Ill. 410, 56 N. E. 155.

⁸⁵ *State v. Westerfield*, 23 Nev. 468, 49 Pac. 119.

appoint one from three persons to be named by a party central committee. This requirement was held void and severable and the remainder of the act valid.⁶⁶ An act creating a city court provided that cases in which the amount involved was not over \$50 should be tried without a jury. This was contrary to the constitution, which guarantied the right of trial by jury in all cases. The provision was held severable and the remainder of the act valid.⁶⁷ Some additional cases are referred to in the margin.⁶⁸

⁶⁶ *State v. Washburn*, 167 Mo. 680, 67 S. W. 592, 90 Am. St. Rep. 430.

⁶⁷ *Mattox v. State*, 115 Ga. 212, 41 S. E. 702. The court says: "The main purpose of the act was to create a court of the character above referred to. The manner of trial to be followed in that court in cases of trifling importance, embracing unquestionably a very small part of the cases falling within the jurisdiction of the court, was merely a matter of minor detail. To hold the section unconstitutional which takes away the right of trial by jury in suits for fifty dollars or less would not in any material or substantial way disturb the general scheme of the act; for the effect of such a ruling would be simply to eliminate from the act the paragraph in question and make applicable to the cases referred to in the paragraph the other provisions of the act in reference to trial by jury. No further legislation would be required, and the practice and procedure of the court would not be in any material respect altered. Viewing the act as a whole we do not think that portion which, if valid, would have resulted in a

deprivation of the right of jury trial in such a small and comparatively insignificant class of cases, when it is provided for all other classes of cases, and when the method and machinery for obtaining juries is provided, is such an essential part of the scheme of the act creating the court as that its withdrawal from the act would have the effect to render the entire act void. The effect of this ruling is to give to litigants in all cases in the city court of Valdosta the right to demand a trial by jury; or, in other words, to give to litigants in that court, in suits involving fifty dollars or less, the same rights with respect to jury trial as are provided by the act for litigants in other cases." pp. 216, 217.

⁶⁸ *Harper v. State*, 109 Ala. 28, 19 So. 857; *Townsend v. State*, 147 Ind. 624, 47 N. E. 19, 62 Am. St. Rep. 477, 87 L. R. A. 294; *Rodman-Heath Cotton Mills v. Waxhaw*, 130 N. C. 293, 41 S. E. 488; *Trimble v. Commonwealth*, 96 Va. 818, 32 S. E. 786; *State v. Sullivan*, 72 Minn. 126, 75 N. W. 8; *State v. Duluth Gas & Water Co.*, 76 Minn. 96, 78 N. W. 1032.

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